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TRADE MARK LAWS

OF THE

WORLD

COMPILED AND EDITED BY

JOHN H. RUEGE

AND

W. B. GRAHAM

FROM THE LIBRARY AND RECORDS OF

WM. WALLACE WHITE

OF THE NEW YORK BAR

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INTRODUCTION

In the many years that I have studied international relations and problems and kept in touch with the activities of the peoples of other countries in their intercourse with the United States, I have come to realize that commerce is perhaps the most powerful agency of civilization and general international advancement.

Trade of any country with foreign lands requires for its development, on the one hand, enterprise and energy and, on the other, opportunity and a sufficient measure of protection. The present field of foreign commerce for the United States may be said to be world wide, even though unfortunate Russia may be temporarily excepted, while protection is generally afforded by local laws, conventions and established commercial practice, but, in a most important measure, by the mark of origin carried by the goods in the shape of a trade mark.

The courts have described a trade mark as the "commercial signature" of the owner, but the time has not yet arrived when such a "signature" will be recognized throughout the world unless ownership be first assured by compliance with the requirements of individual countries; and it is the realization of this fact that leads me to regard the work which this statement introduces as of exceptional significance and usefulness.

Failure to recognize the necessity for compliance with the requirements of the trade mark laws of individual countries has often led to the loss of valuable rights and has jeopardized commercial enterprises. The best insurance against such loss and failure lies in knowledge of and obedience to these laws. As this work affords the needed information, it is hoped and believed that it will be a real factor in the development and extension of our foreign commerce.

Mr. Wm. Wallace White, through whose foresight and cooperation this work has been made possible, has long been

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recognized throughout Pan-American countries and also in Europe and Asia as an authority on patents and trade marks. This compilation therefore of laws on this subject is entitled to wide appreciation and circulation.

JOHN BARRETT,

Former Director General, Pan-American Union, Washington, D. C.; former United States Minister to Siam, Argentina, Panama, and Colombia; now Counsellor and Adviser in International Affairs.

Metropolitan Club,
Washington, D. C., July 1, 1922.

FOREWORD

For years past I have had in mind the preparation for publication of the material contained in this volume, but have not found it possible to take the time from my professional labors.

I am gratified indeed that Messrs. Ruege and Graham have persisted during the long period of time they have had to give to the work, and I feel that from my examination of the volume I am warranted in congratulating them upon the completion, of what has certainly been an extremely arduous task, in a most workmanlike manner.

WM. WALLACE WHITE.

New York, July 1, 1922.

PREFACE.

The present work, the first publication in the English language of the trade mark laws of the world *in extenso,* is intended to meet an existing need evidenced by a constant demand on the part of those most interested in the subject of trade marks and their protection. Lawyers, patent attorneys, manufacturers, exporters and others for whom the trade mark has special interest, have contributed to this demand for an accurate compilation of the laws of the world (for the *texts* which are the bases of trade mark protection).

In the preparation of the work, great care has been taken to obtain the laws from trustworthy sources, and, where the laws are in foreign languages, to provide reliable and accurate translations.

Access to the extensive library of Mr. White, including original manuscripts as well as bound volumes, has made this compilation possible.

The following works, in particular, have been made use of for reference and comparison:

La Propriété Industrielle;

Recueil Général de la Législation et des Traités concernant la Propriété Industrielle, Berne [v. d.];

Official Gazette of the United States Patent Office;

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Malloy's Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, etc., Washington, 1910.

Supplementary features and provisions in the way of regulations, regulatory decrees, schedules of fees and forms, have been omitted as, however useful in practice, these are not integral parts of the basic laws, and are so numerous as to make their inclusion entirely impracticable. Where fees are fixed in the basic law they should not be accepted as authoritative today, due to changes being frequently made incidental to the marked actual variations in monetary standards, nor as comprehensive

of all expense as the law usually makes no express provision for cost of official publication, translation, notary fees, stamped paper, etc., etc.

It is believed that the labor and care expended upon the work warrant the belief that the book will be found to meet the needs of those using it.

JOHN H. RUEGE,
W. B. GRAHAM.

New York, July 1, 1922.

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TITLE I

Marks of Manufacture, Commerce, and Agriculture

CHAPTER I

What constitutes a mark

Article 1. There may be used as marks of manufacture, of commerce, or of agriculture: the denominations of objects or the names of persons under a particular form, emblems, monograms, engravings or prints, seals, vignettes and reliefs, borders, fancy words or names, letters and ciphers with special design or forming a combination, the containers or wrappers of objects, and any other sign with which it is desired to distinguish the manufactures of a factory, objects of commerce, or products of the earth and of the agricultural industry.

Marks may likewise be adopted, under the conditions and for the effects of this law, by those that dedicate themselves to the extractive (mining) industries.

Art. 2. The mark may be affixed to the containers or wrappers, or to the objects themselves that it is desired to distinguish.

What may not constitute a mark

Art. 3. There shall not be considered as marks of manufacture, commerce, or agriculture:

1) Letters, words, names or distinctives that the Nation or the Provinces use or might use;

2) The form that is given to the products by the manufacturer;

3) The color of the products;

4) Terms or locutions that have passed into general use, and signs that do not present characteristics of novelty and specialty;

5) The designations usually employed for indicating the nature of the products, or the class to which they belong;

6) Designs or expressions contrary to morality.

Art. 4. Names and portraits of persons may not be used as marks, without the consent of those or their heirs, inclusive of the fourth degree.

Localities of private domain—Names of places and towns

Art. 5. The names of localities of private domain may be

used as marks only by the proprietors of the same, unless the said names belong to the class of those mentioned in the fourth paragraph of Art. 3 and there be adopted suitable distinctions for avoiding confusion. Under these same conditions there may be employed as marks the names of places or towns.

Right of opposition

ART. 6. The exclusive ownership of a mark, as well as the right to oppose the use of any other that, directly or indirectly may produce confusion between the products, shall correspond to the industrial, merchant, or agrarian, that shall have fulfilled the requirements demanded by this law.

ART. 7. The employment of a mark is optional.

Nevertheless, it may be obligatory when the necessities of public expediency so require.

ART. 8. The exclusive ownership of a mark may be acquired solely with relation to the object for which it shall have been solicited and which must be specified in accordance with the second paragraph of Art. 17.

ART. 9. The ownership of a mark shall pass to the heirs and may be transferred by contract or through disposition of last will.

Transfer, assignment, or sale

ART. 10. The assignment or sale of the establishment shall comprehend that of the mark, save stipulation to the contrary, and the assignee shall have the right to make use of the said mark, even though it be a name, in the same way that the assignor did, without restrictions other than those that are expressly imposed in the deed of sale or assignment.

ART. 11. The transfer of a mark shall be recorded in the Office in which it is registered, in order to acquire the right to use it.

ART. 12. There shall be considered as a mark in use, for the effects of this law, only that with respect to which the Office shall have granted the corresponding certificate.

Duration of registration

ART. 13. The protection of the rights to the exclusive use of a mark shall endure for only ten years, which may be extended indefinitely for other equal terms, by there being fulfilled in all cases the necessary formalities, and on payment, each time, of the fees that are mentioned later on.

Extinction of right of ownership

ART. 14. The right of ownership of a mark shall become extinguished:

1) On petition of the interested party;

2) When the latter shall have allowed the term of ten years to expire without effecting its renewal;

3) When—a question regarding the validity of a mark having been raised—the decision has been to the effect that it might not be granted, either because it belonged to another person or for any other circumstance from among those enumerated in this law.

ART. 15. When the extinction of a mark results through any of the causes mentioned in the first and third paragraphs of the preceding article, the fact must be published in the form specified in Art. 37.

CHAPTER II

FORMALITIES FOR ACQUIRING THE OWNERSHIP OF MARKS

ART. 16. Whoever shall desire to obtain the ownership of a mark of manufacture, commerce, or agriculture, must solicit it from the Office of Patents of Invention.

ART. 17. The application for obtaining a mark must be accompanied by:

1) Six facsimiles of the mark of which it is desired to make use;

2) A description, in duplicate, of the mark if it is a matter of figures or of emblems, there having to be indicated the class of objects for which they are intended, and whether they are to be affixed to the products of a factory, of the earth, or to objects of commerce;

3) A receipt wherein it appears that there has been paid into the Treasury General the amount of the fee established in Art. 38;

4) A formal power of attorney, in case the applicant does not appear in person;

5) The corresponding authorization, in the cases of Art. 4.

Secret method of imprinting

ART. 18. If the process of imprinting the mark should be a secret and those interested wish to guard it, they shall so state in the application to which Art. 17 refers, describing the process in a closed and sealed envelope, which will be opened only in case of litigation.

ART. 19. Applications that shall be presented shall be recorded by means of a brief entry which shall express, in résumé, their contents and the date and hour of their presentation, in a book whose sheets shall be foliated and rubricated by the respective Ministry. The applicant shall, in addition, state whether he waives judicial procedure in the case of opposition or refusal by the Office to grant the ownership of the mark.

Act of presentation

The entry shall be signed by the Chief of the Office, the Secretary, and the applicant, to whom shall be given a receipt for the documents presented, on which, in addition, there shall appear the number of the entry.

In case there shall be solicited an authentic copy of said entry, it shall be given without charge other than that of the paper on which it is drawn up.

Publication of applications

ART. 20. The entry to which the preceding article refers having been made, steps shall be taken, at the cost of those interested, to officially publish an extract from the application, the date of its presentation, the name of the applicant, and an engraving of the mark.

Publication shall be made for five consecutive days in the Capital of the Republic and in the Province or Territory in which the applicant has his domicile.

ART. 21. If—thirty days having elapsed since the last publication prescribed in the preceding article—no one has presented himself opposing the concession, and there shall not have been granted, previously, like or similar marks under the conditions of Arts. 6 and 8, the mark solicited shall be registered and certificate of its ownership shall be issued.

Right of priority

ART. 22. The right of priority as regards the ownership of a mark shall be granted in accordance with the day and hour on which the application shall be presented at the Office.

ART. 23. The certificate of the mark that the Patent Office shall give will consist of a certified copy of the decree that grants it, accompanied by the duplicate of the description and designs; it shall be drawn up in the name of the Nation, there being invoked therein the authorization of the Government, and shall bear the signature of the Chief of the Office and the Secretary, with the seal of the same.

ART. 24. The deposit prescribed in Art. 17 of the law shall be effected in the Provinces and National Territories at the Post Office that the respective regulations will determine.

ART. 25. The Chief of the Office of Marks shall forward to the Postmasters a book in which there shall be entered the annotation of applications that are made for obtaining certificates of mark, provided that those interested present them in the form and under the conditions that the law prescribes.

ART. 26. The books that are sent to the Postmasters, as well as that of the Office of Marks, shall be foliated and rubricated by the respective Ministry.

ART. 27. The Postmasters shall forward, forthwith on receiving the application, to the Chief of the Office of Marks, a certified copy of the entry thereof, with the descriptions, designs, and the evidence of there having been paid the sum that the law requires, without which it shall not be despatched.

ART. 28. The Chief of the Office, whenever he receives an application sent by the Postmaster, shall make an entry in the corresponding book, in which there shall be copied what the Postmaster sends in, and proceed in the manner prescribed in the preceding articles.

Those interested shall make the deposit of the typographic *cliché* required by Art. 37, with the respective Postmasters.

Act of Opposition

ART. 29. Opposition to the concession of a mark shall be made in the form prescribed by Arts. 19 and 25, according to the case.

ART. 30. The Chief of the Office—if he shall have mediated waiver of judicial recourse on the part of those interested—shall render decision within the term of fifteen days.

Administrative Appeal

ART. 31. In the cases foreseen in the preceding article, the decision of the Patent Office, denying or conceding the ownership of a mark, may be appealed within the ten days following to the respective Ministry, which, after hearing the Attorney of the Treasury, shall confirm or reject the denial or the concession.

ART. 32. If those interested shall not have waived judicial recourse, the Office shall forward to the respective Sectional Court (Juzgado de Seccion) a certified copy of the acts of application and opposition.

ART. 33. There being received the certification to which the preceding article refers, the Judge shall proceed to try the case in accordance with the procedure for ordinary actions at law.

Judicial Appeal

ART. 34. Apart from the cases of opposition to which the preceding articles refer, the party interested may institute judicial appeal within the term indicated by Art. 31, if the decision of the Patent Office shall be in denial of the registration of the mark and if he shall not have waived judicial recourse.

Restitution of Rights

ART. 35. In cases in which occasion shall not be given for the concession of a mark, there shall be restored to the party interested the fee collected, in accordance with Art. 17.

ART. 36. Judicial decisions having become *res adjudicata,* they shall be notified to the Office, for the corresponding effects, and there shall be delivered in opportune time to the same Office the respective proceedings.

Publication of Concessions

ART. 37. The Patent Office shall keep a book in which shall be entered in their order the concessions of marks, the Chief thereof being required every three months to deliver to the Executive Power a statement of certificates granted and of those that shall have been denied, there being expressed their respective dates.

Cliché (Electrotype)

This statement shall be published along with the engravings of the corresponding marks. To this effect, those interested shall deposit with the Patent Office a typographic *cliché.*

Fees

ART. 38. For the registration and certificate of a mark, whatever be its origin, there shall be paid a fee of fifty pesos, National currency.

For the registration and certificate of transfer, there shall be paid a fee of twenty-five pesos, National currency.

For certified copies of certificates that shall be requested in advance, there shall be paid five pesos, National currency, in addition to the value of the stamped paper on which they are drawn up.

ART. 39. Marks for which certificates are issued, as well as the applications and descriptions presented, shall remain archived in the Patent Office.

In case of litigation, there shall be exhibited to the competent judge the design of the mark together with the certified copy of the description thereof, or any other exhibit concerning the question.

ART. 40. Marks, as well as their descriptions, shall be in the Office at the disposition of all that desire to consult them.

ART. 41. In order that foreign marks may enjoy the guarantees that this law accords they must be registered in accordance with its prescriptions.

The proprietors thereof or their duly authorized agents shall be the only ones that may solicit registration.

TITLE II

NAMES OF MANUFACTURE, COMMERCE, AND AGRICULTURE

ART. 42. The name of an agrarian, merchant, or manufacturer, and that of the firm, that of the sign or the designation of

a house or establishment that deals in determined articles or products, shall constitute a property, for the effects of this law.

ART. 43. Whoever shall desire to carry on an industry, line of trade or branch of agriculture, already under exploitation by another person, with the same name or with the same conventional designation, shall adopt a modification that will visibly distinguish that name or that designation from the one that the preexisting house or establishment uses.

ART. 44. If the party injured by the use of a name of manufacture, of commerce, or branch of agriculture, does not lodge claim within the term of one year from the day on which it commenced to be used by another, his right shall become outlawed.

ART. 45. Joint stock companies shall have the right to the name that they bear, the same as any individual, and they shall be subject to the same limitations.

ART. 46. The right to the exclusive use of a name as property shall become extinguished together with the commercial house that bears it, or with the exploitation of the branch of industry or agriculture.

ART. 47. There shall not be necessary the registration of the name for exercising the rights accorded by this law, save the case in which it forms part of a mark.

TITLE III

PENAL DISPOSITIONS

ART. 48. They shall be punished with a fine of from twenty to five hundred pesos, National currency, and imprisonment of from one month to one year, the corporal punishment not being possible of being satisfied by a money payment:

1) That counterfeit a mark of manufacture, commerce, or agriculture;

2) That use counterfeit marks;

3) That fraudulently imitate a mark;

4) That knowingly affix to their products or to the effects of their commerce a mark belonging to another or one fraudulently imitated;

5) That knowingly sell, offer for sale, or are prepared to sell, counterfeit marks, and those that sell authentic marks without the consent of their proprietor;

6) That knowingly sell, place on sale, offer to sell or circulate, articles with counterfeit or fraudulently imitated mark;

7) All those that with fraudulent intent place or cause to be placed on the mark of a commodity or product a statement or any other designation false with relation whether to the

nature, quality, quantity, number, weight or measure, or the place or country in which it has been manufactured or shipped, and to medals, diplomas, mentions, awards, or honorable distinctions obtained in expositions or fairs;

8) That knowingly sell, place on sale, or offer to sell, goods or products bearing any of the false statements mentioned in the preceding paragraph.

In case of repetition, these penalties shall be doubled.

ART. 49. There shall be applicable, as regards the crimes to which the preceding article refers, the dispositions contained in Titles V and VI, Sec. 1, Book I, of the Penal Code, in the cases not forseen by said article.

ART. 50. In order that there be crime, it is not necessary that the falsification or imitation embrace all the objects that were to be marked, there sufficing the application on a single object.

ART. 51. Simple attempt shall not be punished, nor shall it entail civil responsibility; however, it shall give occasion for the destruction of the instruments intended exclusively for the falsification and other crimes.

ART. 52. The proceeds from the fines to which the law refers shall be devoted to the development of the schools of the place in which the crime was committed, if there shall be properties sufficient for the civil indemnifications.

ART. 53. The goods or products with a mark illegally employed that are found in the possession of the accused or his agents shall be sequestered and sold following the destruction of the said mark; their proceeds, after the payment of the costs and indemnifications established by this law, shall be adjudicated to the benefit of the public schools of the Province in which the sequestration was made.

ART. 54. There shall likewise be seized: the counterfeit, imitation, and deceitfully shown marks, as well as the instruments that shall have served particularly for the commission of these crimes.

ART. 55. Neither civil nor criminal action may be instituted subsequent to the expiration of three years from the commission or the repetition of the crime, or after one year, counted from the day on which the proprietor of the mark became cognizant of the fact for the first time.

Acts that interrupt the statute of limitations are those that are determined by Common Law.

ART. 56. The dispositions contained in the articles of the present title shall be applicable to those that make use without authorization of the names of a merchant or of a firm, of the

sign or designation of a commercial or manufacturing house, the name of an agrarian or establishment, in accordance with Title II of the present law.

TITLE IV

Procedure

Art. 57. Any proprietor of a mark of manufacture, or commerce, or agriculture, to whose knowledge there comes notice of there being found in the Custom House, Post Office, or other Government Bureau or place, labels, capsules, containers or any other object similar to those that constitute or pertain to his mark, may appeal to the competent authority petitioning the seizure of said objects, and the judge shall concede it under the responsibility of the petitioner and such bond as he shall judge necessary in case of the seizure having been applied for wrongfully.

It will be optional with the judge to dispense with the bond when the petitioner is a person of known responsibility.

Art. 58. Those that sell or place on sale goods or products with a usurped, imitation, or falsified mark, shall be obliged to give to the merchant or manufacturer, owner thereof, complete information in writing respecting the name and address of him that has sold or obtained the merchandise, as well as with regard to the time at which the sale commenced and, in case of refusal, they may be compelled judicially, under pain of being considered as accomplices of the transgressor.

Art. 59. Without prejudice to the provisions of the preceding article and of other rules that hold in criminal actions, the owners of counterfeit, false, or imitation marks may solicit, under their own responsibility, from the competent judges, that an inventory and description be made of the goods or products that are found with said marks, in a house of commerce or elsewhere. Said inventory shall be made by the executive official of the Court, or by any Notary Public that the party interested shall indicate; there having to be prepared an act in which shall be entered the description in detail of the goods or products, and which shall be signed by the petitioner, if he be present, and the executive official or Notary, respectively; and by the owner of the business or store, or two witnesses in his default.

Art. 60. When several inventories are to be taken at the same time at different places, the judge may commission for this purpose any Notary Public, on nomination of the petitioner, or a commissioner of police; and in all cases order, if he so deems necessary, that an expert shall accompany the executive

official or deputies, to the end that he may assist in the description of the inventoried goods.

ART. 61. If, during the making of the inventory, there be given the information mentioned in Art. 58, it shall be entered in the statement.

ART. 62. In order that there may be ordered the inventory and seizure of which the preceding articles make mention, there shall be required the presentation of the certificate of the mark.

ART. 63. Fifteen days having expired following the seizure, this latter shall be without effect unless the owner of the mark brings corresponding action.

ART. 64. In civil actions that are lodged in accordance with Arts. 6 and 43, the plaintiff may demand bond from the defendant, so as not to interrupt him in the exploitation of his business, industry, or agricultural profession, in case the second named shall wish to continue using the mark, name, or designation, and, in default of bond, he may petition the suspension of the exploitation and the seizure of the objects belonging thereto, he himself giving—in his turn—sufficient bond, if it be requested.

The seizure shall be made with all formalities of law.

ART. 65. Actions to which the crimes forseen in Art. 48 of this law give rise, shall be prosecuted in accordance with the procedure prescribed by the Code of Criminal Procedure of the Nation.

ART. 66. Criminal action may not be initiated by the Government, and shall correspond solely to the individuals interested; however, once brought, it may be continued by the Office of the State Attorney.

The plaintiff may withdraw from his action up to the moment of the sentence being pronounced.

ART. 67. Those injured through contravention of the precepts of this law may bring their action for damages and injuries against the authors of and accomplices in the fraud.

Sentences of condemnation shall be published at the cost of the transgressor.

TITLE V

TRANSITORY PROVISIONS

ART. 68. Marks granted in the Republic within four months following the sanction of this law may be without effect if there be formally solicited the registration of a foreign mark, identical or susceptible of producing confusion, granted previously to the owner of the same by competent authority, and which may have been in use in the country before the sanction of this law.

ART. 69. Questions that arise as regards the disposition of the preceding article shall be judicially resolved, unless those interested, of common accord, make waiver thereof. In case of waiver, the disposition of Arts. 30 and 31 shall hold.

ART. 70. Registrations of marks made in accordance with the laws in force shall remain valid for the time yet to run for completing the term of their respective concession.

Renewal of concessions shall be effected in conformity with the prescriptions of this law, preference having to be accorded to the present owners of marks, if they solicit said removal before the expiration of the term of registration.

ART. 71. Laws Nos. 787 of August 19, 1876, and 866 of September 13, 1877, are abrogated.

ART. 72. Be it communicated to the Executive Power.

AUSTRALIAN COMMONWEALTH

TRADE MARKS ACT 1905-1919

PART I—INTRODUCTORY

Short Title

1. This Act may be cited as the Trade Marks Act 1905-1919.

Commencement

2. This Act shall commence on a day to be fixed by proclamation not less than four months after the passing of this Act.

Parts

3. This Act is divided as follows:—

Part I. Introductory.
Part II. Administration.
Division 1. The Minister, the Registrar, and the Trade Marks Office.
Division 2. The Transfer of the Administration of the State Trade Marks Acts.
Part III. Registrable Trade Marks.
Part IV. Registration of Trade Marks.
Division 1. General.
Division 2. Applications.
Division 3. Oppositions.
Division 4. Registration and Effect of Registration.
Division 5. Renewal of Registration.
Part V. Assignment of Trade Marks.
Part VI. The Register of Trade Marks.
Part VII. (Cancelled by Amendatory Law No. 19 of 1912.)
Part VIII. The Commonwealth Trade Mark.
Part IX. Protection of Trade Marks.
Part X. Miscellaneous.

Definitions

4. In this Act, except where otherwise clearly intended—

"The Court" means the High Court or the Supreme Court of the State in which the Trade Marks Office is situate or a Justice thereof.

"The Law Officer" means the Attorney-General or Crown Solicitor of the Commonwealth.

"Person" includes a body corporate and a firm and any association of persons bodies corporate or firms.

"The Register" means the Register of Trade Marks under this Act.

"Registered Trade Mark" means a trade mark registered

under this Act.

"The Registrar" means the Registrar of Trade Marks.

"State Trade Marks Act" means any State Act relating to the Registration of Trade Marks.

"This Act" includes all regulations made thereunder.

"Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

"Trade Mark" means a mark used or proposed to be used upon or in connexion with goods, for the purpose of indicating that they are the goods of the proprietor of the trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

"Registrable Trade Mark" means a trade mark which is capable of registration under the provisions of this Act.

"Prescribed" means, in relation to proceedings before the Court, prescribed by Rules of Court, and, in other cases, prescribed by this Act or the regulations under this Act.

Application of Common Law

5. Subject to this Act, or any Act of the Parliament, the common law of England relating to trade marks shall, after the commencement of this Act, apply throughout the Commonwealth.

Provided that this section shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the law of any State before the commencement of this Act.

State Trade Marks Acts to Cease to Apply to Trade Marks

6. The State Trade Marks Acts of each State shall, on the commencement of this Act, cease to apply to trade marks further than as follows:—

(a) The State Trade Marks Act under which a trade mark is registered shall continue to apply to that trade mark so long as the registration under that Act remains in force.

(b) Proceedings under a State Trade Marks Act, pending at the commencement of this Act, may be continued and completed under the State Trade Marks Act.

(c) Applications for the registration of trade marks may be received and dealt with under a State Trade Marks Act, if made by virtue of some right acquired, before the commencement of this Act, in pursuance of any International Convention for the protection of industrial property.

Registration Under State Trade Marks Acts to Cease After a Certain Period

7. (1) The registration of a trade mark under a State

Trade Marks Act shall cease either—

(a) at the expiration of fourteen years from the commencement of this Act, or

(b) at the time when, under the State Trade Marks Act, the trade mark would, if after the commencement of this Act no fee for the continuance of its registration were paid, first become liable to removal from the register,

whichever first happens.

(2) No fee shall be receivable nor shall any act be done after the commencement of this Act for the continuance of the registration of a trade mark under a State Trade Marks Act.

Trade Marks Registered Under State Act May be Registered Under this Act

8. (1) The registered proprietor of a trade mark properly registered in any State under a State Trade Marks Act may make application for the registration of his Trade Mark under this Act.

(2) The application shall, subject to paragraphs (3), (4), and (5) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3) The trade mark may be registered even if it does not contain the essential particulars required by this Act, but subject, in that case, to such conditions and limitations as to mode or place or period of user as the Registrar, Law Officer, or Court thinks fit to impose.

(4) Where the same trade mark or a nearly identical trade mark is owned or registered by another proprietor in any part of the Commonwealth in respect of the same goods, the trade mark may be registered subject to such conditions and limitations as to mode or place of user or otherwise as the Registrar, Law Officer, or Court thinks fit to impose to preserve the rights of each proprietor.

(5) Where the trade mark or a nearly identical trade mark is common to the trade in another State, the registration under this Act shall confer no exclusive rights in that State on the registered proprietor, and that State may be excepted from the registration under this Act.

(6) The registration of the trade mark under a State Trade Marks Act shall cease upon its registration under this Act.

Unregistered Trade Marks in Use in States

9. (1) The unregistered proprietor of a trade mark in use in any State at the commencement of this Act may make application for the registration of his trade mark under this Act.

(2) The application shall, subject to paragraphs (3), (4),

(5), and (6) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3) The trade mark may be registered if it could have been lawfully registered under the State Trade Marks Act in force, at the commencement of this Act, in the State in which the trade mark was then used, had an application for its registration been made before the commencement of this Act.

(4) If the trade mark does not contain the essential particulars required by this Act, it may nevertheless be registered subject to such conditions and limitations as to mode or place, or period of user, as the Registrar, Law Officer, or Court thinks fit to impose.

(5) Where the same trade mark or a nearly identical trade mark is owned or registered by another proprietor in any part of the Commonwealth in respect of the same goods, the trade mark may be registered subject to such conditions and limitations as to mode or place or user or otherwise as the Registrar, Law Officer, or Court thinks fit to impose to preserve the rights of each proprietor.

(6) Where the trade mark, or a nearly identical trade mark, was, at the commencement of this Act, common to the trade in another State, the registration under this Act shall confer no exclusive rights in that State on the registered proprietor, and that State may be excepted from the registration under this Act.

Extension of Act to Papua

9a. (1) On and after a date to be fixed by proclamation, this Act shall apply to the territory of Papua as if that territory were a part of the Commonwealth.

(2) For the purpose of this section—

(a) any reference in this Act to a State shall be deemed to include a reference to the Territory of Papua, and

(b) any reference in this Act to a State Trade Marks Act shall be deemed to include a reference to the Act or law of that Territory relating to the registration of trade marks.

PART II—ADMINISTRATION

Division 1. The Minister, The Registrar, and The Trade Marks Office

Administration

10. The Minister for Trade and Customs or other the Minister for the time being administering the Department of Trade and Customs shall be charged with the execution of this Act.

Registrar

11. (1) There shall be a Registrar of Trade Marks.

(2) Until the Governor-General otherwise determines the Commissioner of Patents shall be the Registrar of Trade Marks.

(3) The Governor-General may appoint a Deputy Registrar of Trade Marks, who shall, subject to the control of the Registrar of Trade Marks, have all the powers conferred by this Act on the Registrar.

Trade Marks Office

12. For the purposes of this Act an office shall be established which shall be called the Trade Marks Office, and a sub-office shall be established in every State other than the State in which the Trade Marks Office is established.

Seal of Trade Marks Office

13. There shall be a seal of the Trade Marks Office, and impressions thereof shall be judicially noticed.

DIVISION 2. THE TRANSFER OF THE ADMINISTRATION OF THE STATE TRADE MARKS ACTS

Transfer of Administration—Effect of Transfer of Administration

14. On the commencement of this Act the administration of the State Trade Marks Acts of all the States shall be transferred to the Commonwealth and thereupon—

(a) the State Trade Marks Acts of Each State, shall so far as they have any relation to trade marks, cease to be administered by the State, and shall thereafter be administered by the Commonwealth so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights, and the Register shall collect for each State the fees which become payable thereunder; and

(b) all powers and functions under any State Trade Marks Act vested in the Governor of a State or in the Governor with the advice of the Executive Council of a State or in any Minister Officer or authority of a State shall vest in the Governor-General or in the Governor-General-in-Council or in the Minister Officer or authority exercising similar powers under the Commonwealth as the case requires or as is prescribed; and

(c) all records, registers, deeds and documents of the Trade Marks Office of each State vested in or subject to the control of the State shall, by force of this Act, be vested in and made subject to the control of the Commonwealth.

PART III—REGISTRABLE TRADE MARKS

Of What Trade Marks May Consist

15. A registrable trade mark shall consist of essential particulars with or without additional matter.

Registrable Trade Marks

16. (1) A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(a) The name of a company, individual, or firm represented in a special or particular manner;

(b) The signature of the applicant for registration or some predecessor in his business;

(c) An invented word or invented words;

(d) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or surname;

(e) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (a), (b), (c) and (d) shall not, except by order of the Registrar, Law Officer or Court, be deemed a distinctive mark.

(2) For the purpose of this section "distinctive" means adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

(3) In determining whether a trade mark is so adapted, the Registrar, Law Officer, or Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

17. (Repealed by Amendatory Law No. 19 of 1912.)

Restriction on Use of Certain Words in Trade Marks

18. Subject to the regulations, the Registrar may refuse to register any trade mark which contains any of the following words or matters:—

(a) The words "Patent," "Patented," "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers Hall," "To counterfeit this is Forgery," or words to the like effect; or

(b) The word "Royal," or any word of similar import, if the use of the word in the trade mark might lead people to think that the applicant had Royal or Government patronage, or authorization; or

(c) Any representation of the King, the Queen, or any member of the Royal Family; or

(d) Any representation of the Royal arms, or Royal crests, or arms or crests so nearly resembling them as to be likely to lead to mistake, or of the Royal Crowns, or of the British National Flags; or

(e) Any representation of the arms, flag, or seal of the

Commonwealth or of any State; or

(f) Any representation of the arms of any foreign State or country; or

(g) Any representation of the arms or emblems of any city or town in the Commonwealth, or of any Commonwealth or State public authority or public institution; or

(h) Any word or mark which is declared by the Governor-General by proclamation to be for the purposes of this section a prohibited word or mark, or any word or mark so nearly resembling any such word or mark as to be likely to deceive.

19. (Repealed by Amendatory Law No. 19 of 1912.)

20. (Repealed by Amendatory Law No. 19 of 1912.)

Coloured Trade Marks

21. A trade mark may be limited in whole or in part to a particular colour or colours, and in case of any application for the registration of a trade mark the fact that the trade mark is so limited shall be taken into consideration by any tribunal in determining whether it is distinctive or not. If a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Standardisation, Etc., Trade Marks

22. (1) Where any Commonwealth or State authority, or any association or person, undertakes the examination of any goods in respect of origin, material, mode or conditions of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by a mark used upon or in connexion with such goods, the Minister may, if he judges it to be to the public advantage, permit the authority, association or person to register the mark as a trade mark in respect of such goods, whether the authority, association or person is or is not a trader, or is or is not possessed of a goodwill in connexion with such examination and certifying.

(2) When registered, the trade mark shall be deemed in all respects to be a registered trade mark, and the authority, association or person to be the registered proprietor thereof, save that the trade mark shall not be transmissible or assignable except with the permission of the Minister.

(3) This section shall as to conditions of manufacture apply to Commonwealth and State authorities only.

PART IV—REGISTRATION OF TRADE MARKS

Division 1. General

Trade Mark Must be for Particular Goods

23. A trade mark must be registered in respect of par-

ticular goods or classes of goods as prescribed.

Disclaimers

24. (1) If a trade mark—

(a) contains parts not separately registered by the proprietor as trade marks, or

(b) contains matter common to the trade or otherwise of a non-distinctive character,

the Registrar or the Law Officer or the Court, in deciding whether the trade mark shall be entered or shall remain upon the register, may in his or its discretion require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration.

Provided always that no such disclaimer shall affect any rights of the proprietor of the trade mark except such as depend upon its registration.

What Matters Deemed Common to Trade

(2) The fact that a mark or matter therein is publicly and honestly used by more than three several persons in any one State as a mark on or in connexion with similar goods shall be treated as conclusive evidence that it is common to the trade.

Identical Marks

25. Subject to this Act, the Registrar shall not register in respect of goods a trade mark identical with one belonging to a different proprietor which is already on the register in respect of the same goods or description of goods, or so nearly resembling such a trade mark as to be likely to deceive.

Names, Etc., of Living Persons

26. Where the name or a representation of a living person or a person believed by the Registrar to be living appears on a trade mark, the Registrar may require the applicant to furnish him with the consent of that person to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark.

Rival Claims to Identical Marks

27. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner

approved by him or (on appeal) by the Law Officer or the Court.

Concurrent User

28. In case of honest concurrent user or of special circumstances the Registrar, Law Officer, or the Court may, in his or its discretion, permit the registration of the same trade mark or of nearly identical trade marks for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations as to mode or place of user or otherwise as he or it thinks fit to impose.

Associated Trade Marks

29. (1) Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the register as to be likely to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that the trade marks shall be entered on the register as associated trade marks.

(2) If the proprietor of a trade mark claims to be entitled to the exclusive use of any part of it separately he may, if the part satisfies all the conditions of a trade mark, register it as a separate trade mark.

(3) When a part of a registered trade mark is registered separately, it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the register as such, and the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of the part separately registered as a trade mark.

(4) Except for the purpose of assignment or transmission, and subject to the provisions of this Act as to use of associated trade marks, associated trade marks shall be deemed to be registered independently.

User of Associated Trade Marks

30. Where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the Registrar, Law Officer, or the Court, as the case may be, may, if and so far as he or it thinks fit, accept user of an associated registered trade mark or of the trade mark with additions or alterations not substantially affecting its identity as an equivalent for the user of the first-mentioned trade mark.

Series of Trade Marks

31. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods for which they are respectively used or proposed to be used; or

(b) statements of number, price, quality, or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour,

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

DIVISION 2. APPLICATIONS

Who May Apply for Registration

32. (1) Any person, claiming to be the proprietor of a trade mark, may make application to the Registrar for the registration of his trade mark.

Form of Application

(2) The application must be made in the form prescribed and must—

(a) specify the goods or class of goods in respect of which the applicant desires the trade mark to be registered; and

(b) (Repealed by Amendatory Law No. 19 of 1912.)

(c) state an address within the Commonwealth as an address for service.

(3) Separate applications must be made for the registration of a trade mark in respect of each class of goods in respect of which the applicant desires it to be registered.

Lodging of Application

33. (1) Every application must be lodged by being left at or sent by post to the Trade Marks Office or a sub-office.

(2) Such application shall be forthwith referred by the Registrar to an examiner, who shall ascertain and report whether the trade mark is a registrable trade mark, and whether it is identical with a trade mark already on the Register under this Act or any State Trade Marks Act in respect of the same goods or description of goods, or so nearly resembles the latter trade mark as to be likely to deceive, and whether the trade mark or any matter therein is common to the trade.

(3) Subject to this Act the Registrar may either accept the application, with or without modifications or conditions, or refuse it.

Appeal

34. (1) An appeal shall lie to the Law Officer from any conditional acceptance or any refusal by the Registrar of the

application.

(2) The Law Officer shall hear the applicant and the Registrar, and shall decide whether and subject to what conditions or modifications (if any) the application shall be accepted.

Appeal to Court

(3) An applicant aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court.

(4) The Court shall hear the applicant and determine whether the application ought to be refused or ought to be accepted with or without any modification or conditions.

Direct Appeal by Consent from Registrar to Court

35. If the applicant so desires, he may appeal direct from the Registrar to the Court without any appeal to the Law Officer.

Advertisement

36. If the application is accepted with or without conditions or modifications, it shall forthwith be advertised in the prescribed manner.

Limit of Time for Proceeding with Application

37. If, by reason of default on the part of the applicant, the registration of a trade mark has not been completed within twelve months from the date of the lodging of the application, the Registrar shall give notice of the non-completion to the applicant, and if, at the expiration of fourteen days from that notice or such further time as the Registrar in special cases permits, the registration is not completed, the application shall be deemed to be abandoned.

DIVISION 3—OPPOSITION

Notice of Opposition

38. Any person may, within three months after the advertisement of the application or such further time not exceeding three months as the Registrar on application made within the first period of three months allows, lodge at the Trade Marks Office a notice of opposition in duplicate to the registration of the trade mark, setting out the grounds on which he relies to support his notice.

Address for Service

39. Every notice of opposition shall state an address in Australia as an address for service.

Notice to Applicant

40. The Registrar shall send a duplicate of the notice of opposition to the applicant.

Counter-statement by Applicant

41. (1) Within three months after the lodging of notice

of opposition or such further time not exceeding three months as the Registrar on application made within such first mentioned three months allows, the applicant may lodge at the Trade Marks Office a counter-statement in duplicate, setting out the grounds on which he relies to support his application.

Failure to Lodge Counter-statement

(2) If the applicant fails to so lodge a counter-statement he shall be deemed to have abandoned his application.

Service of Counter-statement

(3) The Registrar shall send a duplicate of the counter-statement to the opponent.

Day of Hearing

42. (1) The Registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and to the opponent.

Hearing

(2) On the day so fixed, or on any other day to which the hearing is adjourned, the Registrar shall hear the applicant and the opponent, and shall decide whether the application is to be refused or whether it is to be granted either with or without any modifications or conditions.

Appeal to Law Officer

43. (1) Any party aggrieved by the decision of the Registrar may in the time and in the manner prescribed appeal to the Law Officer.

(2) The Law Officer shall hear the applicant and the opponent, and may determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions.

Appeal to Court

44. (1) Any party aggrieved by the decision of the Law Officer may in the time and in the manner prescribed appeal to the Court.

(2) The Court shall hear the applicant and the opponent, and determine whether the application ought to be refused or ought to be granted with or without any modifications or conditions.

Direct Appeal from Registrar to Court

45. If either party so desires and gives written notice thereof the appeal shall be taken direct from the Registrar to the Court without any appeal to the Law Officer.

Security for Costs

46. If a person giving notice of opposition or appeal does not reside in Australia, the Registrar, Law Officer, or the Court

may order him to give security for costs, and if the order is not complied with, the opposition or appeal shall be deemed to be abandoned.

DIVISION 4—REGISTRATION AND EFFECT OF REGISTRATION

Date of Registration

47. When an application for registration has been accepted and has not been opposed, and the time for notice of opposition has expired, or has been opposed and has been granted, the Registrar, unless otherwise prescribed by the regulations, shall register the trade mark as on the date of the lodging of the application, which date shall be deemed to be the date of registration, and shall issue to the applicant a certificate of registration of the trade mark in the prescribed form.

Duration of Registration

48. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Rights of Registered Proprietor

49. (1) Subject to this Act the person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.

(2) (Repealed by Amendatory Law No. 19 of 1912.)

(3) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of Registered Proprietor

50. Subject to the provision of section fifty-one [A] of this Act, and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of the trade mark upon or in connexion with the goods in respect of which it is registered:

Provided that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights have been defined by the Registrar, the Law Officer, or the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration Prima Facie Evidence of Validity

51. In all legal proceedings relating to a registered trade mark (including applications under section seventy-one of this Act) the fact that a person is registered as proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark under this Act and of all subsequent assignments and transmissions of the trade mark.

Registration Conclusive After Seven Years

51A. In all legal proceedings relating to a registered trade mark (including applications under section seventy-one of this Act) the original registration of the trade mark under this Act shall, after the expiration of seven years from the date of the original registration, be taken to be valid in all respects, unless the original registration was obtained by fraud, or unless the trade mark offends against the provisions of section one hundred and fourteen of this Act:

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continuously used the trade mark from a date anterior to the user of the first mentioned trade mark by the proprietor thereof or his predecessors in business or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of sections eight, nine, or twenty-eight of this Act.

Unregistered Trade Mark

52. No person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of a trade mark, unless in the case of a registrable trade mark it is registered under this Act or a State Trade Marks Act.

Infringement

53. The rights acquired by registration of a trade mark shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

In an action for the infringement of a trade mark, the Court in trying the question of infringement shall admit evidence of the usages of the trade mark in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

User of Name, Address, or Description of Goods

53A. No registration under this Act shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing-Off" Action

53B. Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

DIVISION 5—RENEWAL OF REGISTRATION

Renewal of Registration

54. The Registrar may, on application made by the registered proprietor of a trade mark in the prescribed manner, at any date not later than fourteen years from the date of the original registration or the last renewal of registration, as the case may be (in this Division termed "the date of the last registration"), renew the registration of the trade mark for a period of fourteen years from the date of the expiry of the period of the last registration.

Procedure on Expiry of Period of Registration

55. At the prescribed time before the expiration of fourteen years from the date of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor or his agent in Australia of the date at which the existing registration will expire and the conditions as to proof of substantial user and as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the register, but any party aggrieved shall have a right to appeal in manner prescribed.

Restoration of Trade Mark Removed for Non-Payment of Renewal Fee

56. Where a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar may within three months from such removal, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee for renewal.

Status of Unrenewed Trade Mark

57. Where a trade mark has been removed from the register for non-payment of the fee for the renewal, it shall, nevertheless, for the purpose of any application for registration dur-

ing one year next after the date of removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy or liquidation of the proprietor of the trade mark, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

PART V—ASSIGNMENT OF TRADE MARKS

Assignment and Transmission of Trade Marks

58. A trade mark when registered may be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or class of goods in respect of which it has been registered and shall be determinable with that goodwill.

Apportionment of Marks on Dissolution of Partnership

59. (1) In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks and series of trade marks), on the application of any of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications as he thinks necessary in the public interest.

(2) An appeal shall lie to the Law Officer or, by leave of the Law Officer, to the Court from any decision of the Registrar under this section.

Assignment of Associated Trade Marks

60. Associated trade marks may be assigned or transmitted only as a whole.

PART VI—THE REGISTER OF TRADE MARKS

Register of Trade Marks

61. There shall be kept at the Trade Marks Office a Register of Trade Marks, wherein shall be entered particulars of—

(a) all registered trade marks, with the names and addresses of their proprietors, together with the date of registration and expiry thereof;

(b) notifications of assignments and transmissions, and disclaimers; and

(c) any other matters relating to registered trade marks which are prescribed.

Notification of Assignments and Transmissions

62. Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form and authenticated in the manner prescribed, may be given to the Registrar, who shall thereupon register the assignment.

Trusts Not to be Noticed

63. No notice of any trust, expressed, implied or constructive, shall be entered in the register, or be received by the Registrar.

Inspection of Register

64. The register shall be open to the inspection of the public at all convenient times, on payment of the prescribed fee.

Certified Copies to be Supplied

65. Certified copies of entries in the register shall be given to any person applying for them on payment of the prescribed fee.

Certified Copies Evidence

66. Documents purporting to be copies of or extracts from the register and to be certified by the Registrar and sealed with the seal of the Trade Marks Office, shall be admitted in evidence in all Federal and State Courts without further proof or production of the originals.

False Entries in Register

67. No person shall wilfully—

(a) Make any false entry in the register; or

(b) Make any writing falsely purporting to be a copy of an entry in the register; or

(c) Produce or tender in evidence any writing falsely purporting to be a copy of an entry in the register.

Penalty: Three years' imprisonment.

Correction of Register

68. (1) The Registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark, or by some person entitled by law to act in his name, amend or alter the register by—

(a) correcting any error in the name or address of the registered proprietor of the trade mark; or

(b) altering the name or address of the registered proprietor who has changed his name or address; or

(c) cancelling the registration of the trade mark; or

(d) striking out any goods or classes of goods from those in respect of which the trade mark is registered; or

(e) entering a disclaimer or memorandum relating to the

trade mark which does not in any way extend the rights given by the registration of the trade mark.

(2) Where the register has been amended or altered under this section, the Registrar may—

(a) cancel the certificate of registration of the trade mark, and issue a new certificate of registration; or

(b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.

Registration of Assignments, etc.

69. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission, or otherwise, the Registrar shall, on request and on proof of title to his satisfaction, cause the name and address of the person to be entered on the register as proprietor of the trade mark.

Alteration of registered trade mark

70. (1) The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the Registrar may refuse the leave or may grant it on such terms as he thinks fit, but any refusal or conditional permission shall be subject to appeal to the Law Officer.

(2) If leave to add or to alter the trade mark is granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of Register by Court

71. (1) Subject to this Act, the Court, on the application of any person aggrieved or of the Registrar, may order the rectification of the register by—

(a) the making of any entry wrongly omitted to be made in the register; or

(b) the expunging of any entry wrongly made in or remaining on the register; or

(c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the Court ought to be inserted; or

(d) the correction of any error or defect in the register.

(2) The Registrar shall only make application to the Court under this section in cases where he thinks the application necessary or desirable in the public interest.

(3) Notice of every application to the Court pursuant to this section (other than an application by the Registrar) shall be given to the Registrar, who may be heard thereon.

Removal of Trade Mark from the Register if no bona fide User

72. (1) The Court may, on the application of any person aggrieved, if it is shown that there has been no *bona fide* user of a trade mark for a consecutive period of three years since the date of the last registration thereof, order its removal from the register, unless it was at the date of the application in *bona fide* use and had been so for a period of six months immediately prior to the date of the application.

(2) For the purpose of this section *bona fide* user or use means user or use of a trade mark in respect of the goods in respect of which it is registered for the purposes of trade by the proprietor of the trade mark or a predecessor in title.

Registrar to Carry Out Orders for Rectification

73. The Registrar, upon being served with any order of the Court for the rectification of the register or for the removal of the registration of a trade mark from the register by the party seeking to enforce it, shall cause the rectification or removal to be made accordingly.

PART VII—WORKER'S TRADE MARKS

(Repealed by Amendatory Law No. 19 of 1912.)

PART VIII—THE COMMONWEALTH TRADE MARK

Application of Part

78. (1) This part shall apply to all goods included in or specified by a resolution passed by both Houses of the Parliament that in their opinion the conditions as to the remuneration of labour in connexion with their manufacture are fair and reasonable.

(2) A resolution shall be deemed to have been passed at the commencement of this Act by both Houses of the Parliament that the conditions as to the remuneration of labour are fair and reasonable in respect of goods which are manufactured in any part of the Commonwealth under conditions as to the remuneration of labour prescribed, required, or provided in relation to the goods, by an industrial award or order, or an industrial agreement, under an industrial law.

(3) In this Part "an industrial law" means any Act or State Act existing at the commencement of this Act and providing for conciliation or arbitration, or both conciliation and arbitration, or the determination of the remuneration of labour in connexion with industrial matters or the manufacture of goods, or any statutory modification, amendment or re-enactment thereof, respectively, or any Act or State Act passed after the commencement of this Act and declared by resolution of both

Houses of the Parliament to be an industrial law within the meaning of this Part; and "industrial award or order" includes any determination of any Special Board or Court under an industrial law.

(4) A resolution passed or deemed to have been passed as aforesaid may be by both Houses of the Parliament revoked in whole or in part, and thereupon this Part shall to the extent of the revocation cease to apply.

Registration of Commonwealth Trade Mark

79. (1) The Minister may cause to be designed and registered a trade mark (in this Part called the Commonwealth Trade Mark) consisting of a distinctive device or label bearing the words "Australian Labour Conditions."

(2) The Commonwealth trade mark shall not contain the name of or indicate any State.

(3) Parts III, IV, V, and VI, of this Act shall not apply in relation to the Commonwealth trade mark.

Effect of Registration of Commonwealth Trade Mark

80. (1) Upon the registration of the Commonwealth trade mark the Minister shall be deemed to be the proprietor thereof, and shall be entitled to prevent the unauthorized application of the Commonwealth trade mark.

(2) The rights of the proprietor of the Commonwealth trade mark shall be deemed to be infringed by the unauthorized application to goods of a mark identical or substantially identical with the Commonwealth trade mark, or so nearly resembling it as to be likely to deceive.

(3) The Minister may sue to prevent infringement of the Commonwealth trade mark.

Unauthorized Application of Commonwealth Trade Mark

81. The application of the Commonwealth trade mark to goods shall be deemed to be unauthorized unless—

(a) it is applied by or by direction of the first proprietor of the goods, and is so applied by the authority of the Minister; and

(b) it is applied to goods to which this Part applies; and

(c) the first proprietor of the goods has personally manufactured them, or has paid for the labour other than his own in connexion with their manufacture at least the minimum amount prescribed, required, or provided to be paid to persons actually making the goods by an industrial award or order, or an industrial agreement under an industrial law.

Authority of Minister

82. (1) The authority of the Minister to any person to

apply the Commonwealth trade mark may be given either generally or in respect of specific goods, and shall be given if in his opinion the trade mark will not be applied except as authorized by this Part.

(2) The Minister may revoke his authority in whole or in part if in his opinion a person to whom it has been given has applied or is likely to apply the trade mark in a manner unauthorized by this Part.

Penalty for Infringing Commonwealth Trade Mark

83. (1) No person shall wilfully infringe the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty: Fifty pounds.

(2) No person shall knowingly sell or expose for sale, or have in his possession for sale or for any purpose of trade or manufacture, any goods to which any mark is applied in infringement of the rights of the Minister as proprietor of the Commonwealth trade mark.

Penalty: Fifty pounds.

Prohibition of Importation of Goods to which Commonwealth Trade Mark Applied

84. No person shall knowingly import into Australia any goods, not manufactured or produced in Australia, to which there is applied:

(a) the Commonwealth trade mark, or

(b) a mark substantially identical with the Commonwealth trade mark, or

(c) a mark so nearly resembling the Commonwealth trade mark as to be likely to deceive.

Penalty: One hundred pounds in addition to any liability to forfeiture provided by law.

Removal from Register of Commonwealth Trade Mark

85. The Commonwealth trade mark may, on the application of the Minister, be removed from the register in the manner prescribed.

PART IX—PROTECTION OF TRADE MARKS

Forgery of False Application of Trade Marks

86. Whoever—

(a) forges a registered trade mark; or

(b) falsely applies a registered trade mark to any goods; or

(c) makes any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark; or

(d) disposes of or has in his possession any die, block,

machine, or instrument for the purpose of forging or of being used for forging a registered trade mark,
shall, unless he proves that he acted without intent to defraud, be guilty of an indictable offence, and liable to imprisonment for any term not exceeding three years.

Selling, etc., Goods with False Marks

87. Whoever sells or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forgery of a registered trade mark is applied or to which any registered trade mark is falsely applied, shall be guilty of an offence against this Act, unless he proves—

(a) that he acted without intent to defraud; or

(b) that the goods were manufactured in or imported into Australia and the trade mark was applied to them before the commencement of this Act, and were held by him *bonâ fide* and without intent to defraud.

Penalty: One hundred pounds.

Forfeiture of Articles, etc., on Conviction

87A. (1) Where any person is convicted of an offence against section eighty-six or section eighty-seven of this Act, he shall be liable, in addition to the punishment provided by those sections, to forfeit to the King every chattel, article, instrument, or thing by means of or in relation to which the offence was committed.

Search Warrant

87B. (1) Where, upon information of an offence against section eighty-six or section eighty-seven of this Act, a Justice of the Peace has issued either a summons requiring the defendant to appear to answer the charge or a warrant for the arrest of the defendant, and either the said Justice, on or after issuing the summons or warrant, or any other Justice of Peace, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which the offence was committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such Justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant to enter the house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under the warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether they are or are not liable

to forfeiture under this Act.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing the forfeiture of the goods or things, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, the goods or things will be forfeited, and at the time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order the goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section may be destroyed or otherwise disposed of in such manner as the court of summary jurisdiction by which they are forfeited directs, and the court may, out of any proceeds which are realized by the disposition of the goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he has innocently sustained in dealing with the goods.

Importing Goods with False Marks

88. Whoever imports into Australia any goods to which any forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied shall, unless he proves that he did not knowingly import the goods in contravention of this Act, be guilty of an offence against this Act.

Penalty: One hundred pounds.

Aiding and Abetting Offences

89. Whoever aids, abets, counsels, or procures, or is in any way knowingly directly or indirectly concerned in or privy to—

(a) the commission of any offence against this Act; or

(b) the commission of any Act outside Australia which if committed in Australia would be an offence against this Act,

shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

Prohibition of Importation of Fraudulently Marked Goods

90. (1) The following goods are prohibited to be imported, and, if imported, may be seized as forfeited to the King:

(a) All goods to which any forgery of a registered trade mark is applied, or to which any registered trade mark is falsely applied;

(b) All goods manufactured at any place outside Australia and having applied to them any trade mark being the registered

trade mark of any manufacturer, dealer or trader in Australia unless the trade mark is accompanied by a definite indication of the country in which the goods were made or produced; and

(c) All goods manufactured at any place outside Australia and having applied to them any name purporting to be the name of any manufacturer, dealer or trader in Australia, unless the name is accompanied by a definite indication of the country in which the goods were made or produced.

(2) Subject to the regulations, the Comptroller-General of Customs or, on appeal from him, the Minister for Trade and Customs may, if in his opinion the contravention has not occurred either knowingly or negligently, permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General of Customs that the improper marks will be effectually removed from the goods or that such additions will be made as will render unobjectionable any mark or name applied to the goods or that the goods will be forthwith exported.

(3) All imported goods liable to be seized under this section may be seized by any officer of Customs.

(4) The provisions of the Customs Act, 1901, shall apply to the seizure and forfeiture of goods under this section to the same extent as if they were prohibited imports under that Act.

(5) Before taking any action under this section or permitting any officer of Customs to act thereunder, the Collector of Customs for the State may require any person requesting any action on the part of the Customs to give security in accordance with the regulations, but the Collector of Customs may act under this section without any request.

Power to Require Information in Respect of Imported Goods Bearing Fraudulent Marks

90A. (1) Where any goods which are liable to forfeiture under the preceding section are imported into Australia, and the goods bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in Australia, and the Comptroller-General of Customs is, upon representations made to him, satisfied that the use of the name or trade mark is fraudulent, the proper officer of Customs may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods, and to furnish information as to the name and address of the person by whom the goods were consigned to Australia, and the name and address of the person to whom the goods were sent in Australia; and, if the importer or his agent fails within fourteen days to

comply with any such requirement, he shall be guilty of an offence.

Penalty: One hundred pounds.

(2) Any information obtained from the importer of the goods or his agent under this section, or from any other source, may be communicated by the Comptroller-General to any person whose name or trade mark is alleged to have been used or infringed.

What Deemed Forgery of Trade Mark

91. A person shall be deemed to forge a registered trade mark who either—

(a) without the assent of the proprietor of the trade mark or the authority of this Act, makes it or a mark so nearly resembling it as to be likely to deceive; or

(b) falsifies any registered trade mark, whether by alteration, addition, effacement, or otherwise.

When Trade Mark Deemed Applied

92. (1) A trade mark shall be deemed to be applied to anything if it is woven in, impressed on, worked into, or annexed or affixed to, the thing.

When Trade Mark Deemed Applied to Goods

(2) A trade mark shall be deemed to be applied to goods if—

(a) it is applied to the goods themselves; or

(b) it is applied to any covering, label, reel, or thing in or with which the goods are sold or exposed or had in possession for any purpose of trade or manufacture; or

(c) it is used in any manner likely to lead to the belief that it refers to or describes or designates the goods.

(3) "Covering" includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and "label" includes any band or ticket.

What Deemed False Application of a Trade Mark

(4) A trade mark shall be deemed to be falsely applied to goods if, without the assent of the proprietor of the trade mark or the authority of this Act, it or a mark so nearly resembling it as to be likely to deceive is applied to the goods.

Trade Mark, How Described in Pleading

93. In any indictment, information, pleading, or proceeding in relation to a registered trade mark, it shall not be necessary to set out a copy or fac-simile of the trade mark or a description of it, but the trade mark may be referred to as a registered trade mark.

PART X—MISCELLANEOUS

Governor-General May Make Regulations

94. The Governor-General may make regulations, not inconsistent with this Act, prescribing the fees to be paid under this Act and all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Trade Marks Office.

Incidental Powers of Court

95. In addition to any other powers conferred on it by this Act, the Court may in relation to any appeal or application under this Act—

(a) refuse to make any order;

(b) order any issue of fact to be tried in such manner as it directs;

(c) order any party to deliver to the Court or to the Registrar the certificate of registration of any trade mark; and

(d) order any party to pay costs to any other party.

Powers of Registrar and Law Officer

96. The Registrar and the Law Officer, respectively, may for the purposes of this Act—

(a) summon witnesses;

(b) require the production of documents; and

(c) award costs against any party to any proceeding before him.

Penalty for Disobedience to Summons

97. No person who has been summoned to appear as a witness before the Registrar or the Law Officer shall, without lawful excuse and after tender of reasonable expenses, fail to appear in obedience to the summons.

Penalty: Fifty pounds.

Penalty for Refusing to Give Evidence

98. No person who appears before the Registrar or the Law Officer as a witness shall, without lawful excuse, refuse to be sworn or make an affirmation or to produce documents or to answer questions which he is lawfully required to answer.

Penalty: Fifty pounds.

Recovery of Costs

99. Any sum awarded for costs by the Registrar or the Law Officer may, in default of payment, be recovered in any civil court of competent jurisdiction as a debt due by the person against whom the order is made to the person in whose favour the order is made.

Certificate of Validity

100. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the Court or a Judge thereof may certify the same, and if it or he so certifies then in any subsequent legal proceeding in which such validity comes into question, the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court or a Judge thereof certifies that he ought not to have the same.

Remedy in Case of Groundless Threats of Legal Proceedings

100A. Where any person claiming to be the proprietor of a trade mark, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the trade mark, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damages (if any) as he has sustained thereby if the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making the threats:

Provided that this section shall not apply if the person making the threats with due diligence commences and prosecutes an action for infringement of his trade mark.

False Representation to Registrar or Officer

101. No person shall wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder.

Penalty: Three years' imprisonment.

Power of Amendment

102. The Registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark, and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just.

Exercise of Discretionary Power

103. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question, without (if so required within the prescribed time by the applicant) giving the applicant or regis-

tered proprietor an opportunity of being heard personally or by his agent.

Fees to be Paid in Advance

104. Where any prescribed fee is payable in respect of any act or document, the Registrar may refuse to permit or perform the act or to receive or issue the document as the case requires, until the fee payable in respect thereof is paid.

Extension of Time

105. Where by this Act any time is specified within which any Act or thing is to be done, the Registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.

Applications and Notices by Post

106. Any application, notice, or other document, authorized or required under this Act to be left, made, or given at the Trade Marks Office, or to the Registrar, or to any other person, may be sent by a prepaid letter through the post.

Address for Service

107. (1) Any address for service stated in any application or notice of opposition shall for all purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case requires, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them to the address for service of the applicant or opponent, as the case requires.

(2) Any address for service may be changed by notice in writing to the Registrar.

Declaration by Infant, Lunatic, etc.

108. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or the regulations, then the guardian or committee (if any) of such incapable person, or, if there be none, any person appointed by any Federal or State Court or Justice thereof, possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of the incapable person or of any other person interested in the making of such declaration or doing such thing, may make the declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Death of a Party to a Proceeding

109. If a person who is a party to a proceeding under this

Act dies pending the proceeding, the Registrar may on request made in the prescribed manner, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if he is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without such substitution.

Registrar May Recognize Agent

110. Subject to the regulations, the Registrar may permit any agent to do, on behalf of any other person, any act in connexion with the registration of trade marks or any procedure relating thereto.

Certificate of Registrar Evidence

111. A certificate purporting to be under the hand of the Registrar and the seal of the Trade Marks Office as to any entry, matter, or thing which he is authorized by this Act to make or do shall be *primâ facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Penalty on Falsely Representing a Trade Mark as Registered

112. (1) Any person who represents a trade mark as registered which is not so shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connexion with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

Penalty on Unauthorized Assumption of Royal Arms or Commonwealth Arms

113. (1) No person shall, without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of the Governor of a State, or of some Department of the Government of the Commonwealth or of a State (proof whereof shall lie upon the person accused), assume or use in connexion with any trade, business, calling or profession the Royal Arms or Arms so nearly resembling the Royal Arms as to be likely to deceive.

(2) No person shall, without the authority of the King, or of some member of the Royal Family, or of the Governor-General, or of some Department of the Government of the Commonwealth (proof whereof shall lie upon the person accused), assume or use in connexion with any trade, business, calling or profession the Arms of the Commonwealth or Arms so nearly

resembling the Arms of the Commonwealth as to be likely to deceive.

Penalty: Twenty pounds.

Scandalous and Improper Marks

114. No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disentitled to protection in a court of justice, or the use of which would be contrary to law or morality, shall be used or registered as a trade mark or part of a trade mark.

Power to Prohibit by Proclamation Use of Any Word or Mark

114A. Where the Governor-General by proclamation declares any word or mark to be for the purposes of section eighteen of this Act a prohibited word or mark, the Governor-General may if he thinks fit by that or any subsequent proclamation declare that any such word or mark or any word or mark so nearly resembling that word or mark as to be likely to deceive shall not be used or registered as a trade mark or part of a trade mark, either at all or after a date to be specified by the Governor-General, and after the date of the proclamation, or the date specified in the proclamation, as the case may be, the word or mark, or any word or mark so nearly resembling the word or mark as to be likely to deceive, shall cease to be used or registered as a trade mark or part of a trade mark.

International Arrangements for Protection of Trade Marks

115. (1) If upon the request of the Governor-General the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of trade marks, then any person who has applied for protection for any trade mark in the United Kingdom or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his trade mark under this Act in priority to other applicants, and such registration shall have the same date as the date of the original application in the United Kingdom or the Isle of Man, or such foreign State as the case may be:

Provided that such application shall be made within six months from such person applying for protection in the United Kingdom, or the Isle of Man, or the foreign State with which the arrangement is in force:

Provided also that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Commonwealth.

(2) The use of the trade mark in the Commonwealth during the period aforesaid shall not invalidate its registration.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act.

(4) The provisions of this section shall, in the case of foreign States, apply only to those foreign States with respect to which His Majesty, by Order-in-Council, has before or after the commencement of this Act declared the provisions of the aforesaid law to be applicable, and so long only in the case of each such State as the order continues in force with respect to that State.

Provision for Intercolonial, etc., Arrangements

116. (1) Where it is made to appear to the Governor-General that any British possession has made satisfactory provision for the protection in that possession of trade marks registered in the Commonwealth, the Governor-General may by order apply all or any of the provisions of the last preceding section with such variations or additions (if any) as to him seem fit to trade marks registered in that British possession.

(2) An order under this section shall, from a date to be mentioned therein, take effect as if its provisions were contained in this Act, but it shall be lawful for the Governor-General to revoke any such order.

AUSTRIA

LAW OF JANUARY 6, 1890, AS AMENDED MARCH 17, 1913

SECTION I

General Provisions

Article 1. In this law, under the term "Marks" are understood the special marks (such as devices, numbers, vignettes and the like) that serve to distinguish in commerce certain products and goods from other similar products and goods.

In the decision as to whether a mark is adapted therefor, there shall be taken into consideration all facts, in particular, the duration of the use of the mark, in accordance with the conception of the line of business concerned.

Art. 2. Any person wishing to secure the exclusive right to use a mark must obtain the registration of the same conformably with the provisions of the following sections.

Art. 3. Excluded from being registered, and, accordingly, no exclusive right to them can be obtained, are such marks:

1) As are exclusively composed of portraits of the Emperor or of members of the Imperial House;

2) As merely consist of the national or other public arms, or words;

3) As are in general commercial use for certain kinds of goods;

4) As contain improper representations causing scandal or otherwise contrary to public morality, or such inscriptions or statements as do not correspond to the actual commercial state of affairs or the truth, and are liable to deceive the consuming public.

Art. 4. Such marks in which portraits of the Emperor or of any members of the Imperial House, a distinction of honor, the Imperial Eagle or public arms, form a constituent part, shall only be registered if the right to use these special marks within the meaning of the existing provisions shall have been previously evidenced.

Art. 5. No person shall be prevented, through the registration of any mark which also contains letters or words, from using his name or that of his firm, even if it be in an abbreviated form, for distinguishing his goods.

Art. 6. The use of registered marks is in general optional, but the Minister of Commerce may decree, as regards certain

kinds of goods, that goods of that class shall not be put into circulation unless they are provided with marks registered in the sense of this law, according to the procedure to be stipulated.

ART. 7. The sole right to a mark shall not exclude the use of the same mark by another applicant for other classes of goods.

In case of any doubt relative to the similarity of these classes of goods, the Minister of Commerce shall decide after consultation with the Chamber of Commerce and Industry (See Art. 13).

ART. 8. The application for several marks in the name of one applicant, even if they are for the same class of goods, is permitted conformably with the provisions of this law.

ART. 9. The right to a mark shall go with the business for which the mark is intended, shall expire with the same, and shall be transferred to the new proprietor in case of transfer of ownership.

The new owner, however, if he does not continue to conduct his business under an unchanged name, shall effect the assignment of the mark. Until this assignment has been executed in the Register of the Chamber of Commerce and Industry, he cannot make valid the right to the mark, and all official communications relating to the mark may be forwarded, to his disadvantage, to the registered owner of the mark or to his representative of record.

ART. 10. No person shall make use of the name, firm, insignia, or trade name of the establishment of another manufacturer or merchant for distinguishing goods or products without the consent of the party in question.

ART. 11. Everything that is stated in this law regarding the marking of goods applies also to the marks affixed to the cases, barrels, wrappers and the like.

ART. 12. Nothing is altered by the present law in the existing provisions relating to special marks for certain goods, especially the provisions as to punched marks.

SECTION II

REGISTRATION, TRANSFER, AND EXTINCTION OF MARKS

1. Registration

ART. 13. Four copies of the mark for which any person shall desire to obtain the exclusive right must be filed in the Chamber of Commerce and Industry in whose district the business in question is situated.

One copy shall be attached to the Register of Marks which is to be kept by the Chamber of Commerce and Industry; one copy shall be returned to the applicant, inscribed with the acknowledgment prescribed in the succeeding paragraph.

Two copies shall be laid before the Minister of Commerce.

The applicant must, at the same time, state for what classes of goods his mark is intended.

Further, a *cliché* (electrotype) of each mark must be filed with the Chamber of Commerce and Industry, which will be returned to the applicant after having been used.

In the case of marks for materials such as metal, earthenware, glass and the like, at least three samples of the materials with the marks impressed therein shall be filed.

ART. 14. Upon each specimen of the marks filed, the Bureau designated by the Chamber of Commerce and Industry shall note:

a) The serial number of the Register;

b) The day and hour of the filing;

c) The name or the firm for which the mark is to be registered;

d) The indication of the business and goods for which it is intended.

This notation must be signed and the official seal affixed.

The Registers of Marks shall contain the details cited in paragraphs [a] to [d] and shall be open to inspection at the Chambers of Commerce and Industry.

ART. 15. For registering each mark, a fee of five gulden shall be paid, which shall go into the treasury of the Chamber of Commerce and Industry in which the registration was effected.

ART. 16. The registration of marks shall be renewed every ten years, reckoning from the date of registration, by a fresh payment of the fee; otherwise the right to the mark will be considered as expired.

ART. 17. A Central Register of Marks shall be kept at the Ministry of Commerce, in which the marks registered in the Chambers of Commerce and Industry shall be entered in rotation as they arrive.

The same details shall be given in the general Register of Marks as are contained in the Registers to be kept by the Chambers of Commerce and Industry (See Art. 14).

The Central Register of Marks, as well as the catalogues of its contents, which are to be alphabetically arranged and always kept up to date, shall be kept open for inspection in the offices of the Ministry in question.

The same applies to the samples (Art. 13).

Prints of the marks, after the latter have been entered in the Central Register, shall be published, using the blocks furnished (as per Art. 13).

ART. 18. The Minister of Commerce, if necessary, after consultation with experts, shall notify the applicant for protection if a mark identical or similar to the one just applied for exists already for the same class of goods, in order that the applicant, according to his judgment, may sustain, modify or withdraw the application.

The proprietor of the previously registered mark shall be, at the same time, informed that notice has been given to the applicant for protection of the mark.

ART. 19. The exclusive right to use a mark by an applicant shall commence from the day and hour of filing the same at the Chamber of Commerce and Industry, and the priority shall be decided therefrom, should similar marks have been filed by several applicants for protection at the same or different Chambers of Commerce and Industry.

2. Transfers

ART. 20. In order to transfer the right to a mark, within the meaning of Art. 9, the assignee must produce proof of his having acquired the business to which it relates.

The transfer shall be subject to the same tax as the first registration (Art. 15), and shall be entered on the certificate granted to the applicant (Art. 13, paragraph 2), as well as in the Register of the Chamber of Commerce and Industry (Art. 14), and in the Central Register of Marks (Art. 17), and published (Art. 17, last paragraph).

3. Extinction

ART. 21. Marks shall become extinct:

a) On application of the proprietor of the mark;

b) If the registration shall not have been renewed when due under the provisions of Art. 16;

c) . . . (repealed by Law of March 17, 1913.)

d) If the Minister of Commerce shall decide that the mark should not have been registered;

e) In consequence of the decision of the Minister of Commerce pronounced in any action as to the existence of a right to a mark (Art. 30).

ART. 22. The extinction of a mark shall be entered on the certificate (Art. 14), as well as in the Register of the Chamber of Commerce and Industry (Art. 14), and on the Central Trade Mark Register, and shall be published (Art. 17).

SECTION III

Infringement of the Rights to a Mark

Art. 23. Any person who shall knowingly put in circulaiton or keep for sale goods that are unauthorizedly marked with a mark, the exclusive right of user of which belongs to another, and further, any person who for this purpose knowingly counterfeits a mark, commits an offence and shall be liable to be punished by a fine of from 500 to 2,000 gulden, or with from three months' to a year's imprisonment, to which a fine of 2,000 gulden may be added.

The simultaneous application of the more stringent stipulations of the general Penal Code, especially those relating to the crime of fraud (Art. 197 and ff.) is not thereby excluded.

Art. 24. The stipulation of Art. 23 applies also to those who knowingly put in circulation, or keep for sale, goods that are unauthorizedly marked with the name, firm, insignia, or trade name of the establishment of a producer or merchant; further, to those who knowingly fabricate such marks.

Art. 25. The liability to punishment for the acts enumerated in Arts. 23 and 24 is not avoided if the mark, name, firm, insignia, business style of the establishment, be reproduced with so slight an alteration or in such an indistinct manner that the difference might be detected by the ordinary purchaser of the goods in question only through special watchfulness.

Art. 26. The ordinary courts shall be invoked for taking proceedings and the passing of sentence for the offences detailed in Arts. 23 and 24.

An action shall be commenced only on petition of the injured party.

Art. 27. On petition of the injured party an order shall be made that the tools and appliances exclusively or specially used for the counterfeiting or unauthorized reproduction shall be rendered unserviceable for this purpose, that the stocks of counterfeit marks and unauthorizedly manufactured labels shall be destroyed, and the unauthorized marks and labels removed from goods found in the possession of the guilty persons, or, in this respect, from the packages of the same, even if that should involve the destruction of the goods.

The injured party shall be further authorized to publicly make known the judgment against the infringer at the expense of the latter. The mode of publication, as well as the duration of the same, shall be fixed in the decision after consideration of the petition of the injured party.

On application of the injured party, instead of the compensation due him on his private rights, in addition to the penalty, a monetary fine to the amount of 5,000 gulden, to be handed to the injured party, may be decreed by the Court of Justice, the amount to be fixed after free and careful consideration of all the circumstances. Persons sentenced to pay a monetary fine shall be considered as joint debtors. The provisions of this paragraph shall apply, even if the punishment take place under the stricter stipulations of the general Penal Code.

ART. 28. The injured party shall be entitled, even before the punitive judgment is decreed, to demand the confiscation or seizure of the articles enumerated in Art. 27, paragraph 1, so that a repetition of the punishable act may be prevented.

The Criminal Court shall adjudicate immediately on this application, and it shall also be optional for it to authorize the desired confiscation and corresponding custody, as well as the other measures desired, only against security to be given by the injured party.

ART. 29. Should the injured party demand, for any of the offences described in Arts. 23 and 24, the grant of compensation through a Civil Court, the latter shall decide as to the right to compensation, as well as the amount of the same, after due consideration of all the circumstances.

ART. 30. The Minister of Commerce shall decide the point whether the exclusive right of user of a mark pertains to any person, also as to the priority and transfer of this right, and also whether a registered mark may be used by another party for a different class of goods (Art. 7).

Should it appear, in the course of criminal proceedings in any of the cases enumerated in Art. 23, that a decision of a question is dependent upon a prior question, regarding which, under the first paragraph, the Minister of Commerce has to adjudicate, the Criminal Court shall, after submitting the necessary documents to the Minister in question, request him to decide this question first and shall await the notice of same.

ART. 31. Contraventions of the prescriptions set forth in Art. 6 shall be punished by the Administrative Courts in accordance with stipulations of the Industrial Law, in which forfeiture of the goods in question is always decreed.

SECTION IV

MARKS RELATING TO ENTERPRISES OUTSIDE AUSTRIA

ART. 32. As regards the protection of marks, as well as of names, firms, insignia, or trade names of establishments of foreign enterprises, this shall take place in accordance with

treaties or conventions concluded with the States in question.

The owners of foreign establishments shall be entitled to the protection of this law as respects the classes of trade marks specified in the first paragraph, in respect of which reciprocity exists, in so far as no agreements or conventions exist.

The existence of reciprocity shall be made known through a decree to be published in the *Reichsgesetzblatt.*

The regulations of the Customs and Commercial Union shall decide under what conditions marks registered in the territory of the Royal Hungarian Crown, and also names, firms, insignia, or trade designations of establishments of manufacturers or merchants of that country, shall share in the protection secured by this law.

SECTION V

Concluding Regulations

Art. 33. Marks that shall have been registered under former provisions and with reference to which, under Art. 16, the stipulated period of ten years for new registration from the time of registration to the coming into effect of this law has not yet elapsed, shall enjoy, until the lapse of the ten years, the protection accorded under the provisions of this law without re-registration.

On the other hand, such marks as, on the coming into force of this law, shall have been registered more than ten years, shall, after the lapse of three months, reckoned from the time of coming into force of this law, be stricken from the Register if the proprietor of the mark in question shall not have registered it anew during this interval.

Such applications as shall be pending at the time of the coming into force of this law shall be completed before those authorities that have previously been competent, and on the ground of former provisions.

Art. 34. The present law for the protection of marks shall become effective on the expiry of three months from the day of its publication.

On the date specified the law of December 7, 1858 (*Reichsgesetzblatt,* No. 230), shall cease to be of effect.

Art. 35. My Minister of Commerce, My Minister of the Interior and My Minister of Justice are intrusted with the execution of this law.

BAHAMA ISLANDS

LAW OF MAY 29, 1906

Short title

1. This Act may be cited as the Trade Marks Act 1906.

Commencement of Act

2. This Act shall come into operation on such a day as the Governor may by Proclamation appoint.

PART I

DEFINITIONS

3. In and for the purposes of this Act (unless the context otherwise requires):—

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A "trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark, by virtue of manufacture, selection, certification, dealing with, or offering for sale:

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act:

"The Register" shall mean the Register of Trade Marks kept under the provisions of this Act:

A "registered trade mark" shall mean a trade mark which is actually upon the Register:

"Goods" shall mean anything which is the subject of trade, manufacture or merchandise.

"Covering" shall include any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper:

"Label" shall include any band or ticket:

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of Court, and, in other cases, prescribed by this Act or the Rules thereunder:

"The Court" shall mean the Supreme Court and includes the Chief Justice sitting in Chambers.

REGISTER OF TRADE MARKS

4. There shall be kept at the Office of the Registrar of Records for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, noti-

fications of assignments and transmissions, disclaimers, conditions, limitations and such other matters relating to such trade marks as may from time to time be prescribed. The Register shall be kept under the control and management of the Registrar of Records, who is in this Act referred to as the Registrar.

Trust not to be entered on register

5. There shall not be entered in the Register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of extract from register

6. The Register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies sealed with the seal of the Office, of any entry in such Register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade mark must be for particular goods

7. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks

8. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1) (2) (3) and (4) shall not, except by order of the Court, be deemed a distinctive mark:

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade marks.

9. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration

10. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

REGISTRATION OF TRADE MARKS

Application for Registration

11. (i) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(ii) Subject to the provisions of this Act the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments or modifications.

(iii) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court at the option of the applicant.

(iv) An appeal under this section shall be made in the prescribed manner, and on such appeal the court shall, if required, hear the applicant and the Registrar; and shall make an order determining whether, and subject to what conditions, amendments and modifications, if any, the application is to be accepted.

(v) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Court hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(vi) The Registrar or the Court as the case may be may at any time whether before or after acceptance, correct any

error in or in connection with the application or may permit the applicant to amend his application upon such terms as may be thought fit.

Advertisement of application

12. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration

13. (i) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(ii) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(iii) The Registrar shall send a copy of such notice to the applicant, and, within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counterstatement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(iv) If the applicant send such counterstatement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(v) The decision of the Registrar shall be subject to appeal to the Court.

(vi) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(vii) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the Court bring forward further material for the consideration of the Court.

(viii) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as herein-above provided, except by leave of the Court. Where any further grounds of objection

are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent or giving notice as prescribed.

(ix) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(x) The Registrar shall have power in proceedings under this section to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid.

(xi) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the Court may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and, in default of such security being duly given, may treat the opposition or appeal as abandoned.

Disclaimers

14. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the Register, may require, as a condition of its being upon the Register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration

15. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favor of the applicant, the Registrar shall register the said trade mark, and the trade mark when registered shall be registered as of the date of the application for registration and such date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration

16. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar and sealed with the Seal of the Office.

Non-completion of registration

17. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS

18. Except by order of the Court, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

19. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him.

Concurrent user

20. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations, if any, as to mode or place of user, or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and transmission of trade marks

21. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same

in any British possession or protectorate or foreign country in connection with any goods for which it is registered, together with the goodwill of the business therein in such goods.

Apportionment of marks on dissolution of partnership

22. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks) on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Governor in Council.

ASSOCIATED TRADE MARKS

23. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks

24. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

25. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(*a*) statements of the goods for which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality, or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks

26. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that, where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION

Duration of registration

27. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration

28. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration

29. At the prescribed time, before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if, at the expiration of the time prescribed in that behalf, such conditions have not been fully complied with, the Registrar may remove such trade mark from the Register, subject to such conditions (if any) as to its restoration to the Register as may be prescribed.

Status of unrenewed trade marks

30. Where a trade mark has been removed from the Regis-

ter for nonpayment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF THE REGISTER

Correction of register

31. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name—

(1) correct any error in the name or address of the registered proprietor of a trade mark; or

(2) enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) cancel the entry of a trade mark on the Register; or

(4) strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Governor in Council.

Registration of assignments, etc.

32. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the Register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court.

Alteration of registered trade marks

33. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Governor in Council. If leave be granted, the trade mark, as altered, shall be advertised in the prescribed manner.

Rectification of register

34. Subject to the provisions of this Act—

(1) The Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongfully remaining on the Register, or by any error or defect in any entry in the Register, make such order for making, expunging, or varying such entry, as it may think fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the Register.

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(4) Any order of the Court rectifying the Register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the Register accordingly.

Non-user of trade mark

35. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the Register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods, and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of registered proprietor

36. Subject to the provisions of this Act—

(1) The person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from such Register to be vested in any other person, have the power to assign the same, and to give effectual receipts for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

37. Subject to the provisions of section 39 of this Act and to any limitations and conditions entered upon the Register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered. Provided always that, where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be prima facie evidence of validity

38. In all legal proceedings relating to a registered trade mark (including applications under section 34 of this Act) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years

39. In all legal proceedings relating to a registered trade mark (including applications under section 34 of this Act) the original registration of such trade mark shall, after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen), be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 10 of this Act: Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the Register for such similar trade mark in respect of such goods under the provisions of section 20 of this Act.

Unregistered trade mark

40. No person shall be entitled to institute any proceeding

to prevent or to recover damages for the infringement of an unregistered trade mark.

Infringement

41. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of name, address, or description of goods

42. No registration under this Act shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing off" action

43. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of validity

44. In any legal proceeding in which the validity or the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark, on obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between attorney and client, unless in such subsequent proceedings the Court certifies that he ought not to have the same.

Registrar to have notice of proceeding for rectification

45. In any legal proceeding in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Register, in lieu of appearing and being heard, may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue, or of the grounds of any decision given by him affecting the same or of the practice of the Office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the

proceeding.

COSTS

Costs of proceedings before the Court

46. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Mode of giving evidence

47. In any proceeding under this Act before the Governor in Council or the Registrar, the evidence shall be given by notarial declaration in the absence of directions to the contrary, but in any case in which it shall think right so to do, the tribunal may (with the consent of the parties) take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such notarial declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *viva voce,* the Governor in Council or the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as the Court.

Sealed copies to be evidence

48. Printed or written copies or extracts of or from the Register, purporting to be certified by the Registrar and sealed with the Seal of the Office, shall be admitted in evidence in all proceedings without further proof or production of the originals.

Certificate of Registrar to be evidence

49. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Act, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

PART II

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of discretionary power by Registrar

50. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving

such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar

51. Except where expressly given by the provisions of this Act or rules made thereunder, there shall be no appeal from a decision of the Registrar otherwise than to the Governor in Council, but the Court, in dealing with any question of the rectification of the Register (including all applications under the provisions of section 34 of this Act) shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents

52. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Governor in Council be done by or to an agent of such party duly authorized in the prescribed manner.

Registrar may take directions of Law Officer

53. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Attorney General for directions in the matter.

POWER AND DUTIES OF THE GOVERNOR IN COUNCIL

Power of Governor in Council to make rules

54. (i) Subject to the provisions of this Act the Governor in Council may from time to time make such rules, prescribe such forms, and generally do such things as may be thought expedient—

(*a*) for regulating the practice under this Act:

(*b*) for classifying goods for the purposes of registration of trade marks:

(*c*) for making or requiring duplicates of trade marks and other documents:

(*d*) for securing and regulating the publishing and selling or distributing, in such manner as the Governor in Council think fit, of copies of trade mark and other documents:

(*e*) generally for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar or of the Governor in Council.

(ii) Before making any rules under this section the Governor in Council shall publish notice of the intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as he may consider most expedient, so

as to enable persons affected to make representations to the Governor in Council before the rules are finally settled.

(iii) Any rules made in pursuance of this section shall be forthwith advertised in the Official Newspaper.

FEES

55. (1) There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Governor in Council.

(ii) All fees prescribed at any time under this section shall continue in force until the end of the next session of the Legislature, or if the Legislature is at the time in session, until the end of the session then proceeding and shall thereafter continue in force unless the Legislature shall otherwise determine.

SPECIAL TRADE MARKS

Standardization, &c., trade marks

56. Where any association or person undertakes the examination of any goods in respect of origin, material, mode or manufacture, quality, accuracy or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Governor in Council may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor in Council.

OFFENCES IN CONNECTION WITH REGISTRATION

Falsification of entries in register

57. If any person makes or causes to be made a false entry in the Register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such Register, or produces or tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be guilty of an offence against this Act.

Penalty on falsely representing a trade mark

58. (i) Any person who represents a trade mark as registered which is not so shall be liable for every offence, on summary conviction, to a fine not exceeding five pounds.

(ii) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered if he

uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark.

Right to register trade mark registered in England

59. Subject to any prior rights that may have been acquired by any local proprietor of a trade mark, the proprietor of any trade mark registered in England shall be entitled to the registration of such trade mark in the Colony, upon the production of a certificate of the registration of such trade mark in England under the hand of the Comptroller General of patents, designs and trade marks.

PART III

Protection of Trade Marks

Forging or falsely applying trade marks

60. Every person who—

(*a*) forges any trade mark; or

(*b*) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; shall, unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

Selling goods to which false trade mark applied

61. Every person who sells, or exposes for sale, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall be guilty of an offence against this Act, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark; and

(*b*) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(*c*) that otherwise he acted innocently.

Forging trade marks

62. A person shall be deemed to forge a trade mark who either—

(*a*) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(*b*) falsifies any genuine trade mark, whether by alteration,

addition, effacement or otherwise;
Any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark;
Provided that in any prosecution for forging a trade mark the burden of proving assent of the proprietor shall lie on the defendant.

Applying trade marks

63. (i) A person shall be deemed to apply a trade mark or mark to goods who—

(*a*) applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(*c*) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture, in, with, or to any covering, label, reel or other thing to which a trade mark has been applied; or

(*d*) uses a trade mark or mark in any manner calculated to lead to the belief that the goods in connection with which it is used are designated by that trade mark or mark.

(ii) A trade mark or mark shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods, or to any covering, label, reel or other thing.

Falsely applying trade marks

64. A person shall be deemed falsely to apply to goods a trade mark or mark who, without the consent of the proprietor of a trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

Protection of servants acting in good faith

65. Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the Colony who acts in good faith in obedience to the instructions of such master, and on demand made on behalf of the prosecutor has given full information as to his master.

Punishment of offence against Act

66. Any person guilty of an offence against this Act shall be liable on summary conviction to a penalty not exceeding £50 and to the forfeiture of all goods in respect of which the offence was committed.

BARBADOS

MERCHANDISE MARKS (AMENDMENT) ACT, 1896-7

AN ACT TO AMEND THE MERCHANDISE MARKS ACT, 1889

(20 March, 1896.)

Whereas it is expedient to provide for the registration of trade marks in this island and to extend the protection now afforded by the Merchandise Marks Act, 1889,* to certain trade marks therein mentioned to trade marks to be registered in this island; Be it therefore enacted by the Governor, Council, and Assembly of this island, and by the authority of the same, as follows:

Meaning of term trade mark

1. The expression "trade mark" in the Merchandise Marks Act, 1889 (hereinafter referred to as the principal Act), shall from and after the passing of this Act mean also in addition to the meaning given hereto in section three of the principal Act a trade mark registered in the register of trade marks directed to be kept under this Act.

Register of trade marks

2. A register of trade marks to be registered under this Act and of the proprietors thereof shall be kept at the record branch of the colonial secretary's office of this island, and under the superintendence of the colonial secretary of this island, and after the amalgamation of that branch with the prothonotary's office, then such register shall be kept under the superintendence of the registrar appointed under the Registration Office Act, 1887, and the term "registrar" used in this Act shall apply to such colonial secretary or registrar as the case may be, and such register shall be called "the Register of Barbados Trade Marks."

Entries in register

3. There shall be entered in the register of Barbados trade marks a description of registered trade marks and the names and addresses of the proprietors thereof with notifications of any assignments or transmission thereof.

Application for registration

4. The registrar shall, on the application by or on behalf of any person claiming to be the proprietor of a trade mark

*Substantially the same as Great Britain: Merchandise Marks Act, which see.

now used or desired hereafter to be used in this island, register the trade mark, but the person making such application shall in his application for registration state that such trade mark is not a trade mark as defined by section three of the principal Act, and if after registration of such trade mark the registrar shall be satisfied that such trade mark was at the time of such application or has since become a trade mark as defined by section three of the principal Act, he shall erase such trade mark and the name of the proprietor thereof out of the register, and such erasion shall relate back to the time when such trade mark came within the definition aforesaid and such erasion shall take place whether such trade mark came within such definition before or after such registration and whether the proprietor thereof is the same as the registered proprietor or any other person or persons.

Form of application

5. The application for registration must be made in the form set forth in the schedule to this Act and must be left at the office of the registrar.

Condition of registration

6. (1) The application for registration must be accompanied by a representation of the trade mark.

(2) For the purposes of this Act a trade mark must consist of or contain at least one of the following essential particulars:

(*a*) A name of an individual or firm printed, impressed, woven or blown in glass; or

(*b*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(*c*) A distinctive device, mark, brand, heading, label, ticket or fancy word or words not in common use.

(3) There may be added to any one or more of these particulars any letters, words or figures or combination of letters, words or figures, or any of them.

Connection of trade mark with goods

7. A trade mark must be registered for particular goods or classes of goods.

Colour of trade mark

8. A trade mark may be registered in any colour and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

Advertisement of application

9. On receipt of an application for registration the regis-

trar shall advertise in the *Official Gazette* and one of the newspapers of this island a notice in the form set forth in the schedule of this Act, and such notice shall be advertised in three consecutive numbers of the *Official Gazette* and such newspaper, but the registrar shall not insert such advertisement till the person making the application shall deposit with the registrar the sums to be charged by the *Official Gazette* and such newspaper for inserting such advertisement.

Opposition to registration

10. (1) If no notice of opposition to the registration of such trade mark shall be left with the registrar at his office within one month of the first advertisement of the application in the *Official Gazette,* then the registrar shall register such trade mark in the name of the person by or on behalf of whom such application is made.

(2) Any person may within one month of the first advertisement of the application give notice in duplicate at the office of the registrar, of opposition to the registration of the trade mark, and the registrar shall send one copy of such notice to the applicant.

(3) Within fourteen days after receipt of such notice the applicant may send to the registrar at his office a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.

(4) If the applicant send such counter-statement the registrar shall furnish a copy thereof to the persons who gave notice of opposition and shall require him to give security in such manner and to such amount as the registrar may require for such costs as may be awarded in respect of such opposition, and if such security is not given within fourteen days after such requirement was made the opposition shall be deemed to be withdrawn and the registrar shall register such trade mark in the name of the person by or on behalf of whom such application is made.

(5) If the person who gave notice of opposition duly gives such security as aforesaid, the registrar shall inform the applicant thereof in writing and thereupon the case shall be deemed to stand over till the same has been decided by some court of law or equity.

Conflicting claims to registration

11. Where each of several persons claims to be registered as proprietor of the same trade mark, the register shall refuse to register any of them until their rights have been determined

according to law.

Restrictions on registration

12. Except where a court of law or equity has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the registrar shall not register in respect of the same goods or a description of goods a trade mark identical with the one already on the register with respect to such goods or description of goods.

(2) The registrar shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

(3) It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise be deemed disentitled to protection in a court of justice, or any scandalous design.

Assignment and transmission of trade mark

13. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered and shall be determinable with that goodwill.

Registration of assignment

14. The assignment or transmission of every registered trade mark shall be entered on the register by the person claiming under transmission or assignment and such person shall not be entitled to the protection afforded by this Act till such entry shall be made.

Fees

15. There shall be paid under this Act the fees mentioned in the schedule thereto, and while the present prothonotary of the court of common pleas shall be registrar, such fees shall be paid to him for his own use, but after the registrar under this Act shall be the registrar under the Registration Office Act, 1887, then such fees shall be paid to the registrar to be paid by him into the public treasury to the credit of the general revenue and the duties imposed by this Act on the registrar to be appointed under the Registration Office Act, 1887, shall be considered as part of the duties for the performance of which he is appointed and shall not entitle him to any increase of salary.

Construction of Act

16. This Act and the principal Act shall be read and construed as one Act.

SCHEDULE

Form of Application of Trade Mark

To the Registrar of Trade Marks:

You are hereby requested to register the accompanying trade mark in connection with in the name of who claims to be the proprietor thereof. This trade mark is not a trade mark as defined by section three of the Merchandise Marks Act, 1889.

Dated this day of , 18 .

(Signed).....

BASUTOLAND

PROCLAMATION (NO. 46 OF 1921)

By His Royal Highness The High Commissioner

Whereas it is expedient to make provision for the registration in Basutoland of the proprietors of trade marks within the Union of South Africa and for the conferring on such persons certain rights in Basutoland;

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim, and make known as follows:—

1. The Resident Commissioner shall cause to be kept at Maseru or such other place as may be designated by him by notice in the *Gazette* a register of trade marks wherein shall be entered—

(a) the names and addresses of persons entitled to certificates under this Proclamation;

(b) notifications of assignments and transmissions of rights granted under this Proclamation; and

(c) particulars of such other matters as may be required.

2. Any person being registered in the Register of Trade Marks of the Union of South Africa under Act No. 9 of 1916 or any amendment thereof as the proprietor of a trade mark may on production of the certificate of registration of such trade mark accompanied by the prescribed number of representations thereof and on payment of the fee prescribed be registered in the Register of Trade Marks to be kept under section one of this Proclamation, and a certificate of such registration shall thereupon be issued to him by the Resident Commissioner.

3. Any person registered under section two shall so long as the registration of the trade mark in respect of which he is registered remains in force in the Union of South Africa and so long as he is the proprietor thereof have and enjoy in Basutoland the same rights and privileges and be subject to the same duties, obligations and conditions as have been conferred or imposed upon him by the registration of the said trade mark within the Union of South Africa.

4. The name of any person registered under this Proclamation as proprietor of a trade mark may be removed from the Register by written order of the Resident Commissioner—

(a) if the registration of the trade mark in respect of which he was so registered has been revoked or if the period of such

registration has expired by effluxion of time or has been transferred; and

(b) if any license fees which may be prescribed for the renewal of registration are not duly paid.

Provided that before the name of any person is so removed written notice shall be served on him at his registered address if it is within Basutoland or sent to such address by registered post if it be outside Basutoland, calling upon him to show cause within a time to be specified therein why his name should not be removed.

5. Notice shall be given to the Resident Commissioner of any assignment of a trade mark in respect of which any person is registered as proprietor under this Proclamation and of any amendment or extension of the period of registration of such trade mark, and the Resident Commissioner on being satisfied that such assignment, amendment or extension has been duly registered in the Trade Marks Register of the Union of South Africa and on payment of the prescribed fee shall cause an entry to be made accordingly in the Trade Marks Register kept under this Proclamation and in the case of assignment shall issue to the assignee a certificate of registration as proprietor.

6. In any action which may be brought for infringement of the rights granted under this Proclamation any ground upon which the name of the person by whom or in whose right the action is brought could be removed from the register may be applied by way of defence.

7. The fees set forth in the schedule to this Proclamation shall be due and payable for the several acts therein specified, and such fees shall be collected by means of revenue stamps to be affixed to the document in respect of which any such act may be done.

8. This Proclamation may be cited as the Basutoland Trade Marks Registration Proclamation, 1921, and shall have force and take effect from the first day of October, 1921.

BELGIUM

LAW OF APRIL 1, 1879

ARTICLE 1. There shall be considered as a mark of manufacture or of commerce any sign serving to distinguish the products of an industry, or the objects of commerce.

There may serve as a mark in the distinctive form that is given to it by the interested party, the name of a person, as well as the corporate name of a house of commerce or of industry.

ART. 2. No person may pretend to the exclusive use of a mark, unless he has deposited the facsimile thereof in triplicate, with the electrotype of his mark, with the Clerk of the Tribunal of Commerce in the district in which his establishment is situated.

ART. 3. He who has first made use of a mark alone may effect the deposit thereof.

ART. 4. The act of deposit shall be recorded in a special Register and signed by the applicant or his attorney as well as by the Clerk: the power of attorney shall be annexed to the act. This shall indicate the day and hour of the deposit. It shall indicate the class of commerce or industry for which the applicant has intention to avail himself of the mark.

A certificate of the act of deposit shall be delivered to the applicant.

Another certificate shall be transmitted, within eight days, with one of the facsimiles deposited and the electrotype of the mark, to the Central Administration, on the responsibility of which the announcement of the deposit, the description, and the drawing of the mark shall be published in a special volume, six months at most after the receipt of the remittance.

ART. 5. There shall be paid for each mark deposited a fee of ten francs.

The deposit shall not be received save on the production of a receipt evidencing the payment of the tax.

ART. 6. Foreigners that exploit industrial or commercial establishments in Belgium shall enjoy, for the products of these establishments, the benefit of the present law, on fulfilling the formalities that it prescribes.

The same is true of foreigners or Belgians that exploit outside of Belgium their industry or their commerce, if in the countries where their establishments are situated, international conventions have stipulated reciprocity for Belgian marks.

In this latter case, the deposit of marks shall be effected

with the Clerk of the Tribunal of Commerce of Brussels.

ART. 7. A mark may not be transferred except with the establishment whose objects of manufacture or of commerce it serves to distinguish.

Every transfer of mark by act *inter vivos* shall be registered at a fixed fee of ten francs.

The transfer shall be effective, with regard to third parties, only after the deposit of an extract of the act that evidences it, under the formalities prescribed for the deposit of the mark.

ART. 8. There shall be punished by imprisonment of from eight days to six months and by a fine of from 26 to 2,000 francs, or by one of these two penalties alone:

(a) Those who have counterfeited a mark and those who have fraudulently made use of a counterfeit mark;

(b) Those who fraudulently have affixed or cause to appear by addition, subtraction or by any alteration whatsoever, upon the product of their industry or the objects of their commerce, a mark belonging to another;

(c) Those who have knowingly sold, placed on sale or in circulation products provided with a counterfeit or fraudulently affixed mark.

ART. 9. There shall be punished as authors of the crimes foreseen in the preceding article:

Those who shall have committed them, or who shall have directly co-operated in their commission;

Those who through any fact whatever shall have lent for the commission aid such that, without their assistance, the crime would not have been possible of being committed;

Those who, through gifts, promises, threats, abuse of authority or power, guilty machinations or artifices, shall have directly provoked such crime.

ART. 10. He may be condemned to imprisonment of one year and a fine of 4,000 francs, or to one of these penalties only, who shall have committed one of the crimes foreseen by Art. 8 during the five years that shall follow prior condemnation pronounced through application of the same article.

ART. 11. If there exist attenuating circumstances, the penalties of imprisonment and of fine pronounced in virtue of Art. 8 may, respectively, be reduced to less than 8 days and less than 26 francs, without the possibility of their being less than the penalties for misdemeanors.

ART. 12. There may be confiscated, wholly or in part, goods bearing a counterfeit or fraudulently affixed mark, as well as the instruments and utensils having specially served to commit the crime, if the guilty party is the proprietor thereof.

The objects confiscated may be awarded to the complainant who shall have constituted himself the plaintiff, on account or in compensation of his damages.

The court may order, in all cases, the destruction of the counterfeit marks.

ART. 13. The court may order that the judgment be posted in places that it shall designate and inserted in its entirety or in excerpt in journals that it shall indicate, all at the expense of the guilty party.

ART. 14. Public action may be lodged only on complaint of the injured party.

ART. 15. The dispositions of the Law of March 25, 1876, regarding competence in matters of contention, shall be applicable to a civil action relative to the use of marks, when this action is prosecuted apart from public action.

ART. 16. The deposit of a mark made in contravention of the dispositions of the present law shall be declared null on petition of any party interested.

The judgment that pronounces nullity shall be mentioned on the margin of the act of deposit, after it shall have acquired the effect of *res adjudicata.*

ART. 17. There shall be abrogated the dispositions at present in force regarding trade marks, and in particular the Order of *23 nivose an IX,* the Law of *22 germinal an XI,* the Decrees of February 20, and September 5, 1810, the Royal Order of December 28, 1818, the Order of June 1, 1820, as well as the dispositions of Art. 50 of the Law of February 7. 1859, and of Arts. 184, 213 and 214 of the Penal Code, insofar as they apply to said marks.

Nothing is provided anew in whatever concerns special marks imposed by way of public guarantee, and in particular as respects the execution of the customs and firearms laws.

ART. 18. Every deposit of mark effected in execution of existing laws shall cease to have effect on January 1, 1881, unless it has been renewed prior to this date in accordance with Art. 2.

The new deposit shall be exempt from the stamp and registration fee, as well as from the tax imposed by Art. 5.

ART. 19. The Government may conclude international conventions or sign articles additional to the existing conventions assuring to foreigners and to Belgians that exploit their industry or their commerce outside of Belgium, the exclusive use of their mark in Belgium, on fulfillment of the formalities prescribed by the present law and subject to the condition of reciprocity for Belgian marks.

It may also, subject to the conditions that it shall determine, authorize the deposit of marks and the payment of the fee in Belgian Consulates established abroad.

ART. 20. A Royal Order shall determine the time of the coming into effect of the present law, the formalities to be fulfilled for the deposit and the publicity of marks, as well as the measures necessary for the execution of the law.

Let the present law be published; let it be invested with the seal of the State and published in the *Moniteur*.

BERMUDA

THE PATENTS, DESIGNS* AND TRADE MARKS ACT [OF NOVEMBER 18], 1902

Interpretation

1. In this Act unless the context otherwise requires the following words and expressions shall have the meanings assigned to them in this section:

. . . . . .

(6) "Court" means the Court of Chancery of these Islands;

(7) "Judge" means the Chief Justice of these Islands, or in his absence the Acting Chief Justice, (if any), or in the event of the absence of both of them, any Assistant Justice of the Court;

(8) "Crown Officer" means the Attorney General of these Islands or the person for the time being acting as Attorney General under lawful appointment;

(9) "Registrar" shall include any Deputy Registrar or other person acting as Registrar under lawful authority;

(10) "registered" means registered in . . . the Register of Trade Marks . . . and "registration" has a corresponding meaning;

(11) "prescribed" means prescribed by this Act or by any rules made under the provisions of this Act, or any other Act applicable to the case;

. . . . . .

(13) "class" means prescribed class.

Appointment of Registrar

2. It shall be lawful for the Governor to appoint a Registrar of Patents, Designs and Trade Marks, in this Act called the Registrar, and to prescribe the office in which the Registrar for the time being shall carry out his duties under this Act, and such office shall be called the Registry of Patents, Designs and Trade Marks, and is in this Act called the Registry

. . . . . .

TRADE MARKS

Register of trade marks

26. The Registrar shall keep at the registry a book called the Register of Trade Marks, and shall record therein the names and addresses of proprietors of registered trade marks, notifi-

* Matter relating to patents and designs is omitted.

cations of assignments, changes and transmissions of trade marks, and such other matters as may be from time to time prescribed.

Application for registration

27. (1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, and on payment of the prescribed fee, register the trade mark.

(2) The application must be made in the Form E in the first Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at the Registry in the prescribed manner.

(3) The application must be accompanied by the prescribed number of representations of the trade mark and must state the particular class of goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(4) The Registrar may if he thinks fit refuse to register a trade mark, subject to appeal to a Judge in Chambers.

Limit of time for proceeding with application

28. Where the registration of a trade mark shall not be completed within twelve months from the date of the application by reason of default on the part of the applicant the application shall be deemed to be abandoned.

Conditions of registration of trade mark

29. (1) For the purposes of this Act a trade mark must consist of or contain at least one of the following essential particulars:—

(a) a name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b) a written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c) a distinctive device, mark, brand, heading, label or ticket; or

(d) an invented word or invented words; or

(e) a word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the Register.

(3) Provided always as follows—

(a) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof; and

(b) any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade mark, either in this Colony, or elsewhere, before this Act comes into operation, may be registered as a trade mark.

Connection of trade mark with goods

30. A trade mark must be registered for particular goods or classes of goods.

Registration of a series of trade marks

31. When a person claiming to be the proprietor of several trade marks, which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour

32. A trade mark may be registered in any colour, and such registration shall, subject to the provisions of this Act, confer on the registered owner the exclusive right to use the same in that or any other colour.

Applications for registration to be advertised

33. Every application for registration of a trade mark under this Act shall as soon as practicable after its receipt be advertised by the Registrar in the gazette, unless he shall refuse to entertain the application.

Opposition to registration

34. (1) Any person may within three months after the first advertisement of the application for registration give notice in duplicate to the Registrar of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant.

(2) Within one month after the receipt of such notice, or such further time as the Registrar shall allow, the applicant

may send to the Registrar a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.

Conflicting claims to registration

35. On the receipt of such counter statement, or where each of two or more persons claims to be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined by the Court.

Restrictions on registration

36. (1) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods or description of goods a trade mark identical with one already on the Register with respect to such goods or description of goods.

(2) Except as aforesaid the Registrar shall not register with respect to the same goods or description of goods a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Words likely to deceive not to be registered

37. It shall not be lawful to register as part of or in combination with a trade mark any words the use of which would, by reason of their being calculated to deceive, or otherwise, be deemed disentitled to protection in England, according to the law and practise there in such matters.

Provisions for entry on register of distinctive words as additions to trade mark

38. (1) Nothing in this Act shall be construed to prevent the Registrar entering on the Register in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark, any distinctive word or combination of words, or in the case of a trade mark used in this colony or elsewhere before this Act comes into operation any distinctive device, mark, brand, heading, label, ticket, letter, or figure or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made.

(2) The applicant for registration of any such addition must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the state-

ment and disclaimer shall be entered on the Register: provided that a person need not under this section disclaim his own name, or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name, or the foreign equivalent thereof.

(3) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were used publicly by more than three persons in this Colony or elsewhere before this Act comes into operation, on the same or a similar description of goods shall for the purposes of this section be deemed common to the trade in such goods.

Application for registration to be equivalent to public use of trade-mark

39. Application for registration of a trade mark shall be deemed to be equivalent to the public use of the trade mark, and the date of the application shall for the purposes of this Act be deemed to be the date of registration.

Right of first proprietor to exclusive use of trade-mark

40. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall after the expiration of five years from the date of the registration be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Infringement of trade-mark may be restrained and damages recovered

41. The Court may restrain any person from infringing a trade mark and damages for such infringement may be recovered by action in the Court of General Assize if such trade mark has been registered, or if registration thereof in the Register of Trade Marks has been refused, but in no other case. The Registrar on request, and on payment of the prescribed fee, may grant a certificate that such registration has been refused.

Plaintiff to have full costs in subsequent action

42. In an action for infringement of a registered trade mark the Court or the Judge may certify that the right to the exclusive use of the trade mark came in question, and, if the Court, or the Judge, so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between Solicitor and client, unless the Court or the Judge trying the subsequent action certifies that

he ought not to have the same.

Assignment and transmission of trade-marks

43. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Alteration of registered trade mark

44. (1) The registered proprietor of any trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

(2) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard personally, or by solicitor or counsel, on the application, and the Court may make such order as to the Registrar's costs as it may think fit.

(3) If the Court grants leave the Registrar shall on proof thereof, and on payment of the prescribed fee cause the Register to be altered in conformity with the order of leave.

Removal of trade mark from register after fourteen years unless fee paid for renewal of registration

45. (1) At the expiration of fourteen years from the date of registration the trade mark shall be removed from the Register unless the proprietor shall, before the expiration of such fourteen years, pay to the Registrar the prescribed fee, and so from time to time at the expiration of each successive period of fourteen years: provided that three months at least before the expiration of such periods respectively the Registrar shall give notice of such approaching expiration to the proprietor of such trade mark.

(2) Where under this section a trade mark has been removed from the Register for non-payment of the prescribed fee, the Registrar may if satisfied that it is just to do so, restore such trade mark to the Register on payment of the prescribed additional fee.

(3) Where a trade mark has been removed from the Register for non-payment of the prescribed fee, or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shewn to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bank-

ruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under such proprietor or under his bankruptcy is using the trade mark.

GENERAL PROVISIONS

Trusts not to be entered in Register

46. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, notice of any trust expressed, implied or constructive.

Registrar may refuse trade mark in certain cases

47. The Registrar may refuse . . . to register a . . . trade mark which is, or of which the use would be, scandalous or contrary to law or morality.

Registration complete when name of proprietor is entered in Register

48. Any . . . trade mark shall be deemed to be registered when the name of any person is entered as the proprietor thereof in . . . the Register of Trade Marks . . .

Entry of assignments and transmissions in Registers

49. Where a person becomes entitled by assignment, transmission, or other operation of law, to . . . a registered trade mark, the Registrar shall, on request and on proof of title, cause the name of such person to be entered as the proprietor of the . . . trade mark, in the Register of . . . Trade Marks . . . The person for the time being entered in the Register of . . . Trade Marks, as the proprietor of a . . . trade mark, . . . shall, subject to the provisions of this Act and to any rights appearing from such Register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, license or dealing; provided that any equities in respect of such . . . trade mark, may be enforced in like manner as in respect of any other personal property; provided also that the priority of all assignments and charges shall, as regards purchasers for value without notice, be determined by priority of registration.

Inspection of and extracts from the Registers

50. Every Register kept under this Act shall be *prima facie* evidence of all matters duly entered therein, and every such Register . . . shall be open to the inspection of the public on payment of the prescribed fee, subject to the provisions of this Act, and to such Regulations as may be prescribed; and certified copies sealed with the seal of the Registry of any entry in such Register . . . shall be given to any person requiring the same on payment of the prescribed fee;

provided that whenever any . . . extract includes any tracing, drawing, or diagram, an additional fee for any copy thereof shall be paid equal to the cost of preparing such tracing, drawing or diagram.

Registrar may correct clerical errors in certain cases

51. The Registrar may, on request in writing, accompanied by the prescribed fee—

(1) Correct any clerical error in or in connection with an application for . . . registration of a . . . trade mark; or

(2) Correct any clerical error in the name, style or address of the registered proprietor of a . . . trade mark; or

(3) Cancel the entry or part of the entry of a trade mark on the Register; provided that the applicant accompanies his request by a statutory declaration made by himself stating his name, address and calling, and that he is the person whose name appears on the Register as the proprietor of such trade mark; or

(4) Permit an applicant for registration of a . . . trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the . . . trade mark to be registered.

Certificate of Registrar to be prima facie evidence

52. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Act, or any general rules made under this Act to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Orders affecting Registrar may be made by a Judge

53. An order requiring the Registrar to do, or abstain from doing, anything under this Act, may be made by a Judge on a summons in Chambers.

Court or Judge may make orders, impose terms, etc.

54. In any proceedings under this Act the Court or a Judge, as the case may be, may at any time make such orders for an injunction, inspection, or account, impose such terms, and give such directions as to the order in which the parties shall be heard, and the procedure under this Act generally as the Court or Judge shall see fit.

Declaration by infant, lunatic, etc.

55. If any person is by reason of infancy, lunacy or other disability, incapable of making any declaration or doing anything required or permitted by this Act, or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or, if there be none, any

person appointed by any Court or Judge possessing jurisdiction in respect of the property of persons under disability, upon the petition of any person on behalf of such incapable person, or of any other person interested in making such declaration or doing such thing, may make such declaration, or a declaration as nearly as practicable corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Quarterly publication of trade marks registered

56. The Registrar shall within fifteen days after the termination of each quarter cause to be published in the Gazette a list of all . . . trade marks registered during such quarter, and any further information that he may deem generally useful or important; and the cost of such publication shall be defrayed out of the public treasury.

Transmission of copies of registered trade marks to England

57. Copies of . . . all published lists of registered . . . trade marks shall be transmitted to the Controller of Patents, Designs and Trade Marks in England.

Register empowered to make rules regulating the practice under this Act, etc.

58. The Registrar, with the sanction of the Governor in Council, may from time to time make such general rules and do such things as he may think expedient, for regulating the practice of registration under this Act, for classifying goods for the purposes of . . . trade marks, or for any other purpose which may be deemed necessary for carrying out the provisions of this Act; and shall also have power, with the like sanction, to alter, add to, amend or revoke any such rules.

Rules to be published

59. All rules made in pursuance of this Act shall be published in the Gazette.

Fees of Registrar

60. The Registrar shall be entitled to receive for his own use the fees specified in the second schedule to this Act for the services therein mentioned, and for any other services performed by him under the provisions of this Act such reasonable fees as shall be sanctioned by the Governor in Council for such other services respectively.

Appeal to Governor-in-Council as to fees

61. If any person shall be dissatisfied as to any fee demanded from him by, or paid by him to, the Registrar, he may

appeal to the Governor in Council, whose decision thereon shall be final.

Declaration

62. Any declaration required to be made under this Act may be taken before the Registrar.

63. All books, stationery and other requisites which shall be required for the use of the Registrar for the purposes of this Act shall be supplied to him at the public expense, and the cost of printing the prescribed forms, and any other necessary documents used in, or issued from, the Registry for the purposes of this Act, shall be defrayed out of the public treasury.

Suspending clause

64. This Act shall not come into operation unless or until the Governor shall notify by proclamation that it is His Majesty's pleasure not to disallow the same, and subject as aforesaid, it shall come into operation on the date of such proclamation or on such later date as shall be thereby fixed for the purpose.

BOLIVIA

LAW OF JANUARY 15, 1918

CHAP. I

Marks

ARTICLE 1. There is understood by mark every characteristic and peculiar sign, emblem or denomination with which it be desired to distinguish the productions of a factory, the objects of commerce, the products of the land and of the agricultural, forest, live-stock, and extractive [mining] industries.

There may be used as marks: names and denominations under a distinctive form, fancy words or titles, numbers and letters of special design or forming combinations, labels, posters, emblems, monograms, covers, borders, stamps, seals, engravings, arms, figures, stamped devices, reliefs, filigrees, vignettes, containers, receptacles, or any other analogous typical sign.

ART. 2. There may not be used as marks: (1) letters, words, names or distinctive emblems of the State; (2) national and foreign arms, escutcheons, or standards, without special authorization; (3) terms and locutions that have passed into current and general use, distinguishing a product, with relation to the same product; (4) designs or expressions immoral or offensive as regards persons and institutions; (5) portraits and proper names of persons without their permission or that of their heirs inclusive of the fourth degree; (6) the usual form or color of the products; (7) signs, denominations, designs, or others, specified in Art. 1, that do not present the character of novelty with relation to the product to be distinguished; (8) marks that through general use may have become of public domain.

ART. 3. Likewise, there may not be used as marks those that resemble marks previously registered, occasioning confusion. Simple variations of letters or details, preserving the likeness of the whole, are included within this prohibition.

CHAP. II

OWNERS OF MARKS; REGISTRATION AND EXPIRATION

ART. 4. Any individual or corporation that may have adopted a mark shall have the right to its exclusive use on registration of the same in the form established by the present law.

ART. 5. Only the proprietors of registered marks or their attorneys may oppose or demand the avoidance of another regis-

tration, prosecute infringements, etc., without prejudice of that especially provided for in Arts. 20 and 21.

ART. 6. Syndicates or corporate associations, local or national, etc., may likewise use and register special marks for the benefit of their adherents, it being always necessary to add the individual mark of the same.

ART. 7. The registration of the mark for chemical and pharmaceutical products shall be obligatory. On it or on its conjointly affixed label the formula of the component ingredient shall be set forth when it is a matter of medicinal specifics.

ART. 8. The exclusive ownership of a mark as such shall be acquired with relation to the articles for which it was applied, according to the proviso of Art. 57.

ART. 9. The registration of a mark bestows upon it the legal protection and other rights established in the present law for the term of ten years, counted from the date of the grant.

ART. 10. In case of conflict of rights between two or more proprietors of registered marks, he that shall apply for his registration first shall have precedence.

ART. 11. The right of ownership to a mark shall be extinguished: (1) on petition of the party interested; (2) when the legal term has expired without the renewal having been effected; (3) when the nullity of a mark is declared by the competent authority; (4) when the mark contains false designations with relation to the nature of the article, the place or country wherein it has been manufactured or distributed, and to medals, diplomas, awards, or distinctions of honor granted in expositions or competitions.

CHAP. III

FORMALITIES FOR THE REGISTRATION OF MARKS

ART. 12. Any person that desires to obtain the registration of a mark shall apply to the Chief of the Office of Industrial Property, presenting:

(1) An application on stamped paper, himself or through a legal representative with ample power, stating the location of the factory, industry or business whose mark it is desired to register;

(2) Six copies of the original label or *etiquette* that the party interested uses as a mark, or six facsimiles of the same;

(3) An electrotype whose size shall not be greater than ten centimetres in length by eight in breadth and twenty-four millimetres in thickness;

(4) A description in duplicate of the mark in the Spanish language, in which shall be indicated the products or merchan-

dise to which it is affixed and the number of the class, in accordance with the nomenclature found in Art. 37;

(5) Corresponding authorization, in the cases of Art. 2, paragraph 5;

(6) It being a matter of collective marks, there shall be included a certificate that proves the legal existence of the association or syndicate.

ART. 13. The application having been filed in the form and under the conditions expressed in the preceding article, the Chief of the Office of Industrial Property shall enter at the foot a short statement, noting the day and the hour on which it was presented. A receipt or certificate of filing will be granted on verbal request of the party interested.

ART. 14. In the *Revista de Propiedad Industrial,* which will be issued under the charge of that Office, or, in default of such, in the *Boletín Departamental,* the application for registration shall be published three times ten days apart, with notice of presentation; the electrotype of the mark, and the number of the Class to which the merchandise protected thereby belongs.

ART. 15. Fifty days having passed since the first publication without opposition having been brought, and the requisites indicated by the present law having been fulfilled, the Chief of the Office of Industrial Property shall issue a resolution accepting or denying the registration; in the first case, he will issue the certificate of registration of the mark.

ART. 16. The certificate shall consist of a short extract that will contain the name, profession, and domicile of the applicant; the designation of the mark and the Class to which it belongs; date of the presentation and of the decree that grants registration. There shall be added the duplicate of the description of the mark mentioned in paragraph 4 of Art. 12.

ART. 17. Resolutions of the Chief of the Office of Industrial Property shall be appealable to the Minister of Industry.

CHAP. IV

RENEWAL OF REGISTRATION

ART. 18. The owner of a mark may every ten years renew the registration of the same, in order to continue enjoying the corresponding legal rights. In order to obtain this renewal the documents previously presented may be utilized, and the new registration will be granted without necessity of the publications or other requisites prescribed for the first, and solely with the obligation of paying new fees, in conformity with Art. 30.

ART. 19. The renewal of a mark shall be applied for within

the three months prior to expiry of the first registration. The ten years specified in Art. 9 and in the preceding article having expired without the renewal having been applied for, the registration shall become legally extinct.

CHAP. V

Oppositions, Avoidances, and Jurisdiction

Art. 20. The Public Ministry, or any person that has or has not a registered mark, may bring opposition against the registration of a mark that might be included within the prohibitions of Art. 2, as well as oppose the avoidance of said registration. Those interested that have a prior registered mark may also oppose applications for registration or solicit the nullification of those already granted, in the cases of Art. 3.

In either case these actions shall be tried in accordance with the terms established by this law.

Art. 21. The owner of a registered mark may oppose the grant of a new registration that injures his rights, within the term of fifty days from the first publication, or lodge application for its avoidance within six months from the date of concession.

Art. 22. Avoidance that shall be applied for subsequent to the term fixed in the preceding article shall have to be brought before the District Judge within the year following.

Art. 23. The right of ownership of a mark shall become final in eighteen months, action for nullification being outlawed at this same time.

Art. 24. If it be a matter of prior use of a mark, absolute proof only will be accepted.

Art. 25. The Chief of the Office of Industrial Property will decide in first instance as regards oppositions and appeals for avoidance, with appeal to the Minister of Industry.

CHAP. VI.

Assignments

Art. 26. The ownership of the mark passes to the heirs and may be transferred by contract or by provision of last will.

Art. 27. The assignment or sale of the establishment covers that of the marks, save stipulation to the contrary, and the assignee has the right of availing himself of them, even though they be of a name, in the same manner as the assignor used them, without restrictions other than those expressly indicated in the bill of sale or assignment.

Art. 28. Assignments shall be recorded in the Office of

Industrial Property, to the end that they shall be of effect against third parties.

ART. 29. There shall be issued a certificate of the mark in favor of the assignee on corresponding stamped paper form.

These certificates shall be of special series and numeration, different from registered marks, and reference shall be made to the number and series of the original mark.

CHAP. VII

FEES; STAMPED PAPER

ART. 30. For a mark registered with relation to a single class of goods, there shall be paid into the National Treasury a fixed fee of thirty Bolivianos. The annual tax of five Bolivianos, established by the Law of November 25, 1893, is abrogated.

ART. 31. For each additional class of goods that the mark protects, there shall be paid an additional fee of five Bolivianos.

ART. 32. For collective marks there shall be paid the sole fee of sixty Bolivianos, even if they comprehend several or all the classes of Art. 37.

ART. 33. Certificates of registration and of renewal shall be drawn up on special forms of paper stamped with five Bolivianos.

ART. 34. Certificates of assignment shall be drawn up on forms of the value of ten Bolivianos.

ART. 35. Legalized copies of the preceding certificates shall be issued on ordinary stamped paper of the value of one Boliviano.

ART. 36. For each publication of the *cliché* of a mark or corresponding information, in accordance with Art. 14, there shall be paid two Bolivianos.

For that of a commercial or industrial name, insignia, etc., there shall be paid one Boliviano for each time.

ART. 37. For the effects of Arts. 8 and 12, each mark may be affixed only to the products included in any of the following categories:

1. Live animals, of the breed of horses, cattle, sheep, goats, swine, birds; other live animals.

2. Food substances, fresh or prepared meat, edible fats, oleomargarine, butter, natural or preserved milk, cheese of every class, caviar, fish, shell-fish, molluscs, honey, natural and artificial, wheat, rye, barley, oats, corn, flour of cereals, rice in the grain, malt, alimentary compositions, vegetables, potatoes, tubers and their flour, fruits, coffee, cocoa and chocolate, tea,

sugar, spices, table oil, salt, other food articles of animal or vegetable origin.

3. Wines, beer, alcohol, spirits, mineral waters.

4. Raw and partly prepared materials, hides, marble, tortoise-shell, mother-of-pearl, natural fertilizers, hay and forage, coca, quinine, grains and seeds, India rubber, caucho, tobacco-leaf, construction and cabinet woods, charcoal, copper and its barilla, tin and barilla, tungsten (wolfram) and its barilla, lead, iron, zinc, aluminum, silver, gold, marble and alabaster, other stones, mineral oils, lime, cement, sulphur, wool, silk, cotton, jute, hemp, flax, ramie.

5. Starches, soaps, candles and tapers, perfumery and cosmetics, dyes, stains and varnishes, chemical products.

6. Medicinal compositions.

7. Cigars and cigarettes and other tobaccos.

8. Manufactured furs, footwear, gloves, articles of travel.

9. Wool, silk, cotton, etc., thread of every kind, embroideries, fancy-work, buttons.

10. Hats of every kind, linens, manufactured garments and trimmings.

11. Furniture in general.

12. Papers and cartons, printed books, printed music, other articles of the graphic arts.

13. Manufactures of marble, gypsum, cement and stone, tiles, brick, mosaics, tubing, porcelain and delft, other pottery, glassware, crystal ware.

14. Articles of manufactured iron, articles of aluminum, copper, bronze, nickel, lead and zinc.

15. Jewelry, silverware, and like articles of precious metal, imitation jewelry.

16. Locomotives, electric motors and apparatus, steam engines, machines for weaving, pressing, printing, carding, ironing, embroidering, spinning, and other machines applicable to industry, machines for mining, typewriting machines, sewing machines, machines for the manufacture of sugar, spirits and beer, agricultural implements, tools for artisans, office equipment.

17. Coaches, automobiles, velocipedes, motorcycles, launches and other boats and their accessories.

18. Musical instruments, scientific apparatus, chronological apparatus and accessories.

19. Arms and munitions, rifles, guns, side-arms, powder and explosives.

20. Games and toys, objects of art.

CHAP. VIII

Industrial and Commercial Names and Titles; Labels, Insignia, Etc.

Art. 38. The name of the merchant or producer, that of the firm, that of joint stock companies, that of the sign, designation, or insignia of a house or establishment that trades in determined articles or products shall constitute a property for the effects of this law.

Art. 39. Whoever shall desire to carry on an industry, trade, or line of business already exploited by another person with the same name or with the same conventional designation shall adopt a modification that will make that name or that designation visibly distinct from that which the pre-existing house or establishment uses.

Art. 40. If the party injured by the use of a name does not bring action within the term of one year from the day its use is publicly begun by another, he shall lose his action to all claim.

Art. 41. Joint stock companies shall have the right to the name that they bear, the same as any individual, and they are subject to the same limitations.

Art. 42. The right to the exclusive use of the name as property shall be extinguished along with the commercial house that bears it, or with the exploitation of the branch of business for which it has been intended.

Art. 43. The registration of the name is not necessary for the purpose of exercising the rights granted by this law.

Nevertheless, for the ends of Arts. 44, 45, and 46, it may be recorded in a special Register that shall be opened for the purpose, by serial number, there being indicated the name, denomination or sign, its application, the domicile of the owner and the location of the establishment, the day and hour of presentation.

These same data shall be published three consecutive times in the *Revista de Propiedad Industrial* or the *Boletín Departamental.*

Art. 44. The owner of the name, corporate name, sign or denomination of the house, enterprise, or establishment may take civil action to prevent the usurpation or imitation and demand indemnities and damages that shall be caused him thereby.

Art. 45. He may likewise take criminal action against the infringer in case of fraud. This will be presumed when the name or denomination shall have been registered and published in the form of Art. 43, without prejudice to proof to the contrary.

ART. 46. Infringers in such case shall suffer the penalty of from one to three months of imprisonment and a fine of from 50 to 200 Bolivianos.

CHAP. IX

FALSIFICATIONS AND IMITATIONS AND THEIR PENALTY

ART. 47. They shall be punished with the fine of from 100 to 500 Bolivianos and the penalty of from three months to one year of imprisonment:

(1) Who falsify a mark;

(2) Who use false marks;

(3) Who fraudulently imitate a mark;

(4) Who affix to their products or merchandise the mark of another and knowingly distribute them.

ART. 48. They shall be punished with a fine of from 50 to 200 Bolivianos and with from one to three months of imprisonment:

(1) Who sell, offer for sale, or offer to sell false or fraudulently imitated marks, and those that sell authentic marks without the consent of their owner;

(2) Who sell or offer to sell or distribute spurious goods with false mark or mark fraudulently imitated with respect to genuine marks;

(3) Who place or have placed on the mark of merchandise or a product a false statement or any designation with relation either to the nature, quality, quantity, or to the place or country in which it has been made or sold, or medals, diplomas, mentions, awards, or distinctions of honor awarded in expositions or competitions, without prejudice to their right being annulled in conformity with paragraph 4 of Art. 11;

(4) Who sell, place on sale, or offer to sell products or merchandise with any of the false statements mentioned in the preceding paragraph.

ART. 49. In cases of repetition, the penalties imposed by Arts. 47 and 48 shall be doubled.

ART. 50. Merchandise or products with false, imitation, or illegally used marks that are found in the possession of the culprit, his accomplices or agents, shall be confiscated and sold after destruction of said marks. Its returns, after payment of the costs and damages in favor of the civil party shall be applied to the funds for instruction of the respective municipalities; the same as the fines fixed by this law.

Likewise, the instruments intended for the execution of these offenses shall be destroyed.

ART. 51. Also, marks with fraudulent references, referred

to in paragraph 5 of Art. 48, shall be destroyed.

Art. 52. Civil or criminal action may not be brought after the expiry of three years from the commission or repetition of the offense, or from the day on which the owner of the mark had knowledge of the fact for the first time.

The acts that interrupt the prescription (as to outlawing of actions) are the same as those that the Common Law determines.

Art. 53. Criminal action for the offenses comprised in Arts. 45, 47, and 48 shall be lodged before the ordinary Courts.

Art. 54. To constitute an offense, it is unnecessary that the falsification or imitation embrace all of the articles that were to be marked—the application to a single object sufficing.

Art. 55. Mere attempt shall not be punished; but it will occasion the destruction of the instruments intended exclusively for the falsification and other offenses, and the payment of the costs and expenses occasioned to the owner of the mark.

Art. 56. Those that have sold or have for sale merchandise or products with usurped or falsified marks shall be exempt from the penalty (but not from the confiscation), if in the act of being summoned they shall give complete and authenticated statement in writing to the owner of the legitimate mark, the agent, representative, or to the Judge, concerning the name and address of the established manufacturer or merchant that has sold or procured for him the merchandise, as well as the time at which he commenced its sale, save the case of it being proven that he sold, having knowledge of the falsification or usurpation.

CHAP. X

Procedure for the Repression of Falsifications, Imitations, etc.

Art. 57. Every industrial or merchant that has knowledge that there are in the custom House, Post-Office, or an individual business concern, marks of his, falsified or fraudulently imitated, or products, fraudulently falsified or imitated to the prejudice of his rights or interests, may petition the seizure of said articles and the Judge will so order under the responsibility of the petitioner and with sufficient security in case the seizure may have been petitioned without right. It will be optional with the Judge to dispense with the security when the petitioner is a person of known responsibility.

Art. 58. Without prejudice to the provisions of the preceding article and to other means that are availed of in criminal cases, the owners of usurped, falsified, or imitated marks may petition, on their responsibility, before the competent Judges,

that an inventory and a description of the goods or products that are found with said marks in a business house or other place may be made. Said inventory shall be made by the Clerk of the Court or any Notary Public that the party interested may indicate, the entry requiring that the detailed description of the goods or products shall be made, and that it shall be signed by the petitioner, if he be present, by the Clerk or Notary, on their part, and by the owner of the business or store, or in his default, by two witnesses.

ART. 59. If several inventories are to be made at the same time at different places, the Judge may authorize for this purpose any Parochial Judge or Commissioner of Police, on request of the petitioner, and in every case order, if he so deems necessary, that an expert shall accompany the Clerk or deputy, for the purpose of assisting in the description of the inventoried goods.

ART. 60. If the information provided for in Art. 56 shall be given in the deed of inventory, it shall be included in the records.

ART. 61. To the end that the seizure and the inventory, whereof the preceding articles treat, may be ordered, prior presentation of the certificates of registration of the mark shall be required.

ART. 62. Fifteen days having elapsed after the making of the seizure, the same will be without effect if the owner of the mark shall not lodge corresponding action, save case in which the name or domicile of the delinquent be unknown, in which the destruction of the marks may be petitioned subject to the conditions of Arts. 50 and 51, on proof of its legality, barring action by the proprietor of the mark against the offender for three years after the destruction of the mark shall have been decided on.

CHAP. XI

THE OFFICE OF INDUSTRIAL PROPERTY

ART. 63. There shall correspond to the Office of Industrial Property, annexed to the Minister of Industry, the procedure and grant of registry of marks and other functions authorized by this law.

ART. 64. There shall be opened a Register of Inscriptions in serial number of the certificates of registered marks, with the affixing of the mark; another for those transferred, and another for names and insignia.

ART. 65. Said Office will centralize the cases and other documents relative to marks of manufacture previously regis-

tered and will arrange them duly and methodically in order to facilitate their inspection.

It shall make an index in alphabetical order of marks and of owners, classifying them, in addition, according to classes, in conformity with Art. 37.

CHAP. XII

Transitory Provisions

Art. 66. Marks previously registered shall remain in force for a term of ten years counting from the date of the grant, on payment of the corresponding fiscal fee. Those regarding which said fee has been satisfied in advance shall remain in force for the whole term covered by said payments; new presentations not being possible of acceptance after the promulgation of this law.

Said terms having expired, renewal of the registry shall be effected in order to maintain the legal rights.

Art. 67. Cases under consideration may be terminated in accordance with the old regulation, or they may avail themselves of the provisions of the present regulatory law.

Art. 68. This law shall become effective three months after its promulgation.

BRAZIL

DECREE NO. 3343, OF OCTOBER 14, 1887, AS AMENDED BY DECREE NO. 1236, OF SEPTEMBER 24, 1904

ARTICLE 1. A manufacturer or merchant shall have the right to distinguish his merchandise or products by means of special marks.

ART. 2. Industrial and trade marks may consist of everything that this law does not prohibit and which may distinguish articles from others, identical or similar, of different origin.

Any name, special or common denomination, firm or corporate title, and letters or ciphers only, will serve for this purpose if invested with a distinctive form.

SOLE PARAGRAPH. Marks may be used either upon the articles themselves or upon the receptacles or wrappers of said articles.

ART. 3. In order to guarantee the exclusive use of said marks, their registry, deposit and publication in accordance with the present law are indispensable.

ART. 4. The Commercial Junta (Council) or Inspectoria (Board of Inspection) of the locality of the establishment, or of the principal one when more than one of the same kind belong to a single owner, is competent for the registry. The Commercial Junta of Rio de Janeiro is also competent for the registry of foreign marks and as the central depository of those registered in other Juntas or Inspectorias.

ART. 5. To effect the registry there is necessary a petition from the party interested or his special attorney, accompanied by three specimens of the mark, containing:

1) A representation of what constitutes the mark, with all its accessories and explanations;

2) A declaration of the class of industry or trade for which it is intended, the occupation of the petitioner, and his place of residence.

ART. 6. The Secretary of the Junta or the clerk of the Inspectoria appointed for that purpose shall certify on each of the models the day and hour of its presentation, and, should the registry be ordered, he shall deposit one of them in the archives and deliver the others to the interested party, with a note of the registry and its number.

ART. 7. Within thirty days the interested party shall have published in the newspaper that inserts the acts of the Federal

or State Government, the certificate of registration containing the explanation of the characteristics of the mark, copied from the declaration required by Art. 5, No. 1; and within sixty days (reckoning these terms from the date of the said registry) he shall deposit one of the models in the Commercial Junta of Rio de Janeiro in accordance with the terms of Art. 4.

ART. 8. There shall be prohibited the registration of a mark that contains or consists of:

1) Coats of arms, armorial bearings, decorations or insignia, public or official, domestic or foreign, when their use has not been duly authorized;

2) A commercial name or partnership firm of which the petitioner cannot lawfully make use;

3) The indication of a fixed locality or establishment which is not of the origin of the article, whether there be joined to this indication a fictitious name or another's name, or not;

4) Words, images, or representations, that involve offense to individuals or to public decorum;

5) The reproduction of another mark already registered for an article of the same kind;

6) The total or partial imitation of a mark already registered for a product of the same kind which may mislead or confuse the buyer. The possibility of error or confusion will be considered to be verified whenever the differences of the two marks cannot be recognized without attentive comparison or examination.

ART. 9. In the registration the following rules shall be observed:

1) Priority in the day or hour of the presentation of the mark establishes preference as to registration in favor of the petitioner; in case of the simultaneous presentation of two or more identical or similar marks the preference of that one will be admitted which has been used or possessed for the longest time, and in default of this requisite none will be registered without being modified by the interested parties;

2) In case of doubt as to the use or possession of a mark, the Junta or Inspectoria will order the interested parties to settle the question before the Commercial Tribunal, registration being carried out in conformity with the judgment;

3) Should identical or similar marks, as set forth in Art. 8, Nos. 5 and 6, be registered in different Juntas or Inspectorias, the one which is prior in date shall prevail, and in case of simultaneous registry, either of the interested parties may apply to the said Commercial Tribunal, which shall decide which shall be maintained, having in view the provisions of No. 1 of this

article;

4) From the decision refusing registration, an appeal can be made, in the Federal District, to the Court of Appeals, and in the States to the court of superior jurisdiction, by:

i) Anyone that considers himself injured by it as regards some registered mark;

ii) The interested party in the cases named in Art. 8, Nos. 2 and 3;

iii) The party injured in the case specified in No. 4, first part;

iv) The public prosecutor in the two cases, Nos. 1 and 4, last part.

The term allowed for making these appeals shall be five days, reckoning from the publication of the decision; but if the party does not reside in the place where the publication is made, and does not have a special attorney there, the term shall commence to run thirty days later.

ART. 10. Neither the failure to lodge an appeal nor its postponement shall destroy the right of any other party to bring suit in conformity with the preceding article:

1) For procuring the nullification of the registration made contrary to the provisions of Art. 8;

2) To oblige the competitor that is entitled to the same or a similar name to modify it so that error or confusion may be impossible (Art. 8, No. 6, last part). This action may only be brought by one who can prove prior possession of the mark or name for commercial or industrial use, though he has not registered it, and it expires by limitation, like that referring to Art. 8, Nos. 2, 3 and 4, first part, if not brought within six months after the registry of the mark.

ART. 11. The registration shall be valid for all purposes for fifteen years, at the end of which it may be renewed, and so on thereafter.

The registration shall be regarded as null and void, if the owner of the registered mark shall not make use of it within the term of three years.

ART. 12. The mark may only be transferred together with the line of industry or trade for which it has been adopted, after it has been duly entered in the register, upon examination of authentic documents.

A like annotation shall be made should the firms be altered and the mark still continue to be used. In both cases publication is necessary.

ART. 13. The following persons shall be punished with imprisonment of from six months to one year and a fine, in favor

of the State, of 500 to 5,000 milreis:

1) Whoever uses a legal mark of another person on products of false origin;

2) Whoever uses a wholly or partly counterfeited mark belonging to another person;

3) Whoever sells or offers for sale articles bearing the mark of another, the owner of which is not the producer of said articles;

4) Whoever sells or offers for sale articles bearing a mark of another, wholly or partly counterfeited;

5) Whoever reproduces wholly or in part, by whatever means, any industrial or trade mark duly registered and published, without permission of the owner or his legal representative;

6) Whoever imitates an industrial or trade mark, in such a manner that the consumer may be deceived;

7) Whoever uses a mark so imitated;

8) Whoever sells or offers for sale articles bearing an imitated mark;

9) Whoever uses a commercial name or firm that does not belong to him, whether it forms part of a registered mark or not.

PARAGRAPH 1. To constitute the imitation referred to in Nos. 6 to 9 of this article it is not necessary that the resemblance of the mark should be complete. It is sufficient, whatever the differences, that there should be a possibility of mistake or confusion, as set forth in Art. 8, No. 6, last part.

PARAGRAPH 2. The usurpation of the commercial name or firm referred to in Nos. 5 and 6 shall be considered as existing, whether the reproduction be entire, or whether there be additions, omissions, or alterations, provided that there be the same possibility of mistake or confusion on the part of the consumer.

ART. 14. The following persons shall be punished with a fine of from 100 to 500 milreis in favor of the State:

1) Whoever, without due authority, uses, as an industrial or trade mark, arms, armorial bearings, or public or official insignia, domestic or foreign;

2) Whoever uses a mark that offends public decorum;

3) Whoever uses an industrial or trade mark that contains an indication of a locality or establishment that is not that of the place of origin of the merchandise or product, whether there be joined to this indication another's name or a fictitious one or not;

4) Whoever sells or offers for sale merchandise or products bearing marks such as are set forth in Nos. 1 and 2 of this article;

5) Whoever sells or offers for sale merchandise or products such as are set forth in No. 3.

ART. 15. Whoever uses a mark containing anything personally offensive, or who sells or offers for sale articles bearing such a mark, shall be visited with the penalties of the preceding article.

ART. 16. Criminal action against offenses named in Nos. 1, 2 and 4 of Art. 14, shall be instituted by the Public Prosecutor of the district where articles are found which bear the marks therein mentioned.

Any producer of or dealer in a like article residing in the place whence it comes and the owner of the establishment falsely indicated are competent to bring action against the offenders named in Nos. 3 and 5, and the party offended or the party interested against those named in Arts. 14 and 15.

ART. 17. Repetition of the offense shall be punished with double the penalties fixed in Arts. 13, 14 and 15, unless ten years shall have elapsed since the previous condemnation for any of the offenses named in this law.

ART. 18. The said penalties shall not exempt the delinquents from paying indemnity for the loss caused by them, and which the parties injured may demand by proper action.

ART. 19. Sentences pronounced on the offenses embraced in this law shall be published in full by the successful party in the same journal in which the registries are published; otherwise they shall not be enforced.

ART. 20. The party interested may demand:

1) A search or inspection to ascertain the existence of counterfeit or imitation marks, or of merchandise or products that bear them;

2) The seizure and destruction of counterfeit or imitation marks in the workshops in which they are prepared, or whenever they may be found before they are used for a criminal purpose;

3) The destruction of counterfeit or imitation marks on the packages or articles bearing them before they are cleared from the custom-house, even though the wrappers and the merchandise or products themselves may thereby be damaged;

4) The seizure and deposit of merchandise or products bearing a counterfeit or imitation mark or one indicating a false origin, as set forth in Art. 8, No. 3.

PARAGRAPH 1. The seizure and deposit only take place as preliminaries of an action, and shall be of no effect unless it be instituted within thirty days.

PARAGRAPH 2. The articles seized will serve to guarantee

the payment of the fine and the indemnity due the party, for which purpose they shall be sold at public auction, in the course of the action, if they easily deteriorate, or during the execution, except products which are injurious to the public health, which shall be destroyed.

ART. 21. Seizure of counterfeited products bearing a false mark or a legal one fraudulently used shall be the basis of the process.

ART. 22. Seizure shall be made at the request of the party or *ex officio:*

a) At the request of the party, by any police authority or the Judge of the Civil or Criminal Court, in the Federal District, and in the States by the authorities competent for the search;

b) *Ex officio.*—By the custom-houses at the time the inspection of the goods is made; by the collectors of consumption taxes whenever they find such falsifications in the establishments that they visit; by any authority, when in making searches, he meets with falsifications.

ART. 23. After the seizure *ex officio* has been made the owners of the mark or their representatives shall be notified in order that they may bring an action against the responsible parties, the term of thirty days being granted them for this purpose, under penalty of the seizure becoming null and void.

ART. 24. The search and seizure at the request of the party shall be ordered, after the petitioner has given his bond to the authority ordering the search.

SOLE PARAGRAPH. In this bond the petitioner shall bind himself to pay the losses and damages caused by the search, if the result is negative and the defendant proves that the said petitioner acted in bad faith.

ART. 25. After the seizure has been made, all books found in the place shall be collected, together with the machinery and other articles which were used directly or indirectly for the falsification.

ART. 26. The authority that makes the seizure is competent for the concession of the security.

ART. 27. In the act of the seizure the persons referred to in Art. 33 of the present law shall be arrested *in flagrante delicto.*

ART. 28. After the seizure has been made, the *corpus delicti* shall be proceeded with, in order to prove the commission of the offense.

ART. 29. Within thirty days, reckoned from the date of the seizure, the complaint against those responsible for the

offense shall be presented accompanied by the minutes of the seizure, the *corpus delicti*, the statement of the arrest *in flagrante delicto*, if it has taken place, a list of witnesses and a memorandum of the steps to be taken.

SOLE PARAGRAPH. In the Federal District the court competent for the cognizance of the action is the Civil and Criminal Court, which shall observe the form of procedure established in Art. 101, sole paragraph, of Decree No. 1030, of November 14, 1890. In the States the procedure shall be that established by their respective laws, the court of a single judge being always competent for the trial in first instance.

ART. 30. The tribunal competent for the trial of actions referred to in this law is that of the domicile of the defendant or of the place in which were found the merchandise bearing the counterfeit or imitation mark or a legal mark improperly used.

ART. 31. The jurisdiction referred to in Art. 12 of Law No. 221, of November 20, 1894, is relative to Art. 60, letter (f), of the Constitution, in the cases of a convention or treaty of reciprocity.

ART. 32. The following are jointly responsible for the offenses specified in Arts. 13, 14 and 15:

1) The owner of the workshop where the counterfeit or imitation marks are prepared;

2) The person having them under his custody;

3) The person selling the same;

4) The owner of or person living in the house or establishment in which the articles are deposited, provided they cannot state who the owner is;

5) Whoever has bought the goods from an unknown party or is unable to prove the place of origin of the article or product.

ART. 33. The provisions of this law shall be applicable to Brazilians or foreigners whose establishments are without the national territory, under the following conditions:

1) That there exists between the Union and the nation, in whose territory are the said establishments, a diplomatic convention securing reciprocity of guarantee for Brazilian marks;

2) That the marks have been registered in conformity with local law;

3) That the respective specimen and certificate of registration have been deposited in the Junta Commercial of Rio de Janeiro;

4) That the certificate and explanation of the mark have been published in the *Diario Official*.

SOLE PARAGRAPH. Foreigners that, instead of depositing the certificate of registration made in their respective country, petition directly the registration of their mark in Brazil, shall enjoy the guaranties of the present law.

ART. 34. In case of compliance with requirements Nos. 2 to 4 of the preceding article, the provision in Art. 9, No. 3, shall have effect in favor of marks registered in foreign countries that have signed the convention promulgated by decree No. 9233 of June 28, 1884, or that have declared their adherence to it, for the space of four months, counting from the day when the registration is made according to local law.

ART. 35. The guarantees given by this law are applicable to the marks registered in conformity with former laws.

ART. 36. The Government shall revise Regulations No. 9828, of 1887, putting them in accord with the provisions of the present law.

ART. 37. Articles 353 to 355 of the Penal Code are hereby changed in accordance with the provision of Arts. 13, 14 and 15 of the present law.

ART. 38. All provisions to the contrary are hereby revoked.

BRITISH CENTRAL AFRICA PROTECTORATE (NYASALAND)

ORDINANCE NO. 9 [OF DECEMBER 4], 1903

Short title

1. This Ordinance may be cited as "The Patents, Designs, and Trade Marks Ordinance, 1903."*

Registration. Substantive and Adjective Law

2. The Registrar of the British Central Africa Protectorate shall be Registrar of Patents, Designs, and Trade Marks within the Protectorate, and shall for that purpose have all the powers and authority of the Comptroller-General of Patents in England under the Patents, Designs, and Trade Marks Act, 1883 to 1901, or under any statutes amending or substituted for the said statutes.

(*a*) Subject to the other provisions of this Ordinance, the procedure . . . in registering or opposing or amending the registration of . . . a trade mark shall be that in force in England under the Patents, Designs, and Trade Marks Acts, 1883 to 1901, or under any statute amending or substituted for the said statutes.

(*b*) The definition of and the law relating to the subject-matter of . . . trade marks and the definition of and the law relating to true and first . . . grantees, assignees, and licencees shall be those in force in England as aforesaid.

(*c*) The legal remedies of any person claiming an interest in any . . . trade mark shall be those in force in England as aforesaid, except that in the aforesaid statutes, "The Court" shall mean His Majesty's High Court of British Central Africa; the "Comptroller" shall mean the Registrar of British Central Africa Protectorate; the "Board of Trade" shall mean the Commissioner; "Law Officer" shall mean the Crown Prosecutor.

. . . . . .

Fees, fines, penalties

4. The fees, fines, and penalties under this Ordinance shall be those in force in England from time to time.

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* Provisions not relating to trade marks are omitted.

BRITISH GUIANA

ORDINANCE NO. 27 [OF NOVEMBER 24], 1914

Short Title

1. This Ordinance may be cited as The Trade Marks Ordinance, 1914.

DEFINITIONS

Interpretation of Terms

2. In this Ordinance—

A "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A "trade mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale:

A "registrable trade mark" means a trade mark which is capable of registration under this Ordinance:

"The Registrar" means the Registrar of British Guiana:

"The seal of the Registrar" means the seal of the office in which the Register of Trade Marks is kept;

"The Register" means the register of trade marks kept under this Ordinance:

A "registered trade mark" means a trade mark which is actually upon the register:

"The Court" means the Supreme Court of British Guiana.

SEAL

3. The Registrar shall use a seal having a device and impression of the Royal Arms with a label surrounding the same and the inscription "Registrar of Trade Marks, British Guiana," and the use of such seal from and after the first day of January, 1915, is hereby validated and authorized.

REGISTER OF TRADE MARKS

4. There shall be kept for the purposes of this Ordinance at the Office of the Registrar in Georgetown a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the dates of their registration, the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may be prescribed. The register shall be kept under the control and

management of the Registrar.

Trust Not To Be Entered on Register

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and Extract from Register

6. The register shall during office hours be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Registrar, of any entry therein shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade Mark Must Be for Particular Goods

7. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable Trade Marks

8. A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or of some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark;

but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark.

Provided always, that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the 13th August, 1875, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration, shall be registrable as a trade mark under this Ordinance, if it is already registered in the United Kingdom as an old mark used before the said date.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Registrar may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured Trade Marks

9. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any Tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

Restriction on Registration

10. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

REGISTRATION OF TRADE MARKS

Application for Registration

11. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Ordinance the Registrar may refuse an application or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing and communicate to the applicant the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court. The Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(4) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as herein prescribed.

(5) The Registrar or the Court, as the case may be, may

at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as he or it may think fit.

Advertisement of Registration

12. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the applicant shall, as soon as may be after such acceptance, cause the application, as accepted, to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to Registration

13. (1) Any person may, within the prescribed time from the date of the advertisement of an application for registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and, within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement within the prescribed time the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may, either in the manner prescribed, or by special leave of the Court, bring forward further material for the consideration of the Court.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or Registrar other than those stated

by the opponent as hereinabove provided, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar or, in the case of an appeal, the Court shall have the power in proceedings under this section to award to any party costs of such proceedings or any part thereof and to direct how and by what parties and on what scale they are to be paid. Such costs shall be taxed before the Registrar of the Supreme Court and shall be recoverable in the same manner as costs in an action.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the Registrar or the Court may require such party to give security for costs of the proceedings before it, relative to such opposition or appeal and, in default of such security being duly given, may treat the opposition or appeal as abandoned.

Disclaimers

14. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require as a condition of its being upon the register that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which the Registrar or the Court holds him not to be entitled, or that he shall make such other disclaimer as the Registrar or the Court may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of Registration

15. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the

PATENT DEPARTMENT
FISK RUBBER CO.
CUDAHY, WIS.

opposition has been decided in favour of the applicant, the Registrar shall register the said trade mark, and the trade mark when registered shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be the date of registration.

Certificate of Registration

16. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Non-completion of Registration

17. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS

Identical Marks

18. Except in the case of trade marks in use before 13th August, 1875, which are registered in the United Kingdom as old marks used before the said date, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival Claims to Identical Marks

19. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or on appeal by the Court.

Concurrent User

20. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and Transmission of Trade Marks

21. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Apportionment of Marks on Dissolution of Partnership

22. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

23. If application is made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as in the opinion of the Registrar to be calculated to deceive or cause confusion if used by a person other than the applicant, the Tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined Trade Marks

24. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that, when registered, it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of Trade Marks

25. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(*a*) statement of the goods for which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality, or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and User of Associated Trade Marks

26. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that, where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the Registrar or the Court may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION

Duration of Registration

27. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of Registration

28. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on Expiry of Period of Registration

29. At the prescribed time before the expiration of the registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration

will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf, such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of Unrenewed Trade Marks

30. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF THE REGISTER

Correction of Register

31. The Registrar may, on request made in writing by the registered proprietor or by some person entitled by law to act in his name:

(1) correct any error in the name or address of the registered proprietor of a trade mark; or

(2) enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) cancel the entry of a trade mark on the register; or

(4) strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of Assignments

32. Subject to the provisions of this Ordinance, where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Alteration of Registered Trade Mark

33. The registered proprietor of any trade mark may apply in writing to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of Register

34. Subject to the provisions of this Ordinance—

(1) the Court may, on the application in writing of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit;

(2) the Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register;

(3) in case of fraud in the registration or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section;

(4) any order of the Court rectifying the register shall direct that the notice of the rectification shall be served upon the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the register accordingly.

Non-user of Trade Mark

35. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods, and that there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of Registered Proprietor

36. Subject to the provisions of this Ordinance—

(1) the persons for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment;

(2) any equities in respect of a trade mark may be enforced in like manner as in respect of any other property.

Rights of Proprietor of Trade Mark

37. Subject to the provisions of section thirty-nine and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall, except so far as their respective rights shall have been defined by the Court, be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be Prima Facie Evidence of Validity

38. In all legal proceedings relating to a registered trade mark (including applications under section thirty-four), the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be Conclusive after Seven Years

39. In all legal proceedings relating to a registered trade mark (including applications under section thirty-four), the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Ordinance, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section ten hereof.

Provided that nothing in this Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of

the first mentioned trade mark by the proprietor thereof or his predecessors in business or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty of this Ordinance.

Unregistered Trade Mark

40. No person shall be entitled to institute any proceedings to recover damages for the infringement of a trade mark not registered in the Colony.

Infringement

41. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the gooods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of Name, Address, or Description of Goods

42. No registration under this Ordinance shall interfere with any *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing Off" Action

43. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of Validity

44. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order of judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to Have Notice of Proceeding for Rectification

45. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the

Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing, signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

COSTS

Costs of Proceedings Before Court

46. In all proceedings before the Court under this Ordinance the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Mode of Giving Evidence

47. In any proceedings under this Ordinance before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but in any case in which he shall think it right so to do, the Registrar may (with the consent of the parties) take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *viva voce* the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an official referee of the Supreme Court in England.

Sealed Copies to be Evidence

48. Printed or written copies or extracts of or from the register, purporting to be certified by the Register under his seal, shall be admitted in evidence in all Courts and in all proceedings without further proof or production of the originals.

Certificate of Registrar to be Evidence

49. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing, which he is authorised by this Ordinance to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of Discretionaru Power by Registrar

50. Where any discretionary or other power is given to

the Registrar by this Ordinance or by any Rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Recognition of Agents

51. When by this Ordinance any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may, under and in accordance with rules made under this Ordinance, be done by or to an agent of such party duly authorized in the prescribed manner.

RULES

Power of Governor-in-Council to Make Rules

52. Subject to the provisions of this Ordinance the Governor-in-Council may make such rules, prescribe such forms, and generally do such things as he thinks expedient—

(*a*) for regulating the practice under this Ordinance;

(*b*) for classifying goods for the purposes of registration of trade marks;

(*c*) for making or requiring duplicates of trade marks and other documents;

(*d*) for securing and regulating the publishing and selling or distributing, in such manner as the Governor-in-Council thinks fit, of copies of trade marks and other documents;

(*e*) generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the Registrar.

FEES

53. There shall be paid in respect of applications and registration and other matters under this Ordinance such fees as may be prescribed and notified by the Governor-in-Council.

SPECIAL TRADE MARKS

Standardization Trade Marks

54. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Governor-in-Council may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in

connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor-in-Council.

OFFENCES

Falsification of Entries in Register

55. If any person makes or causes to be made a false entry in the register kept under this Ordinance or a writing falsely purporting to be a copy of any entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such entry or writing, knowing the same to be false, he shall be guilty of a misdemeanor.

Penalty on Falsely Representing a Trade Mark as Registered

56. (1) Any person who represents a trade mark as registered in British Guiana which is not so registered shall be liable for every offence, on summary conviction, to a fine not exceeding fifty dollars.

(2) A person shall be deemed, for the purposes of this Ordinance, to represent that a trade mark is registered in British Guiana if he uses in connection with the trade mark the words "registered in British Guiana," or any words expressing or implying that registration has been obtained in British Guiana for the trade mark.

ROYAL ARMS

Unauthorised Assumption of Royal Arms

57. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person, without the authority of His Majesty or a member of the Royal Family, uses in connection with any trade, business, calling, or profession, any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies to His Majesty or to such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or who is authorised by the Governor to take proceedings in that behalf, be restrained by injunction from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem,

or title to continue to use such trade mark.

Amendment of Sec. 2, Ord. 2 of 1888

58. Section two of the Merchandise Marks Ordinance, 1888,* is hereby amended as follows:

"The definition of 'Trade Mark' shall be read and construed as if the definition of Trade Mark in this Ordinance were inserted in lieu thereof."

Repeal No. 16 of 1912

59. The Merchandise Marks Ordinance, 1888, Amendment Ordinance, 1912, is hereby repealed.

*Substantially the same as Great Britain: Merchandise Marks Act, which see.

BRITISH HONDURAS

This colony has no trade mark law.

Merchandise Marks Act No. 3, of 1888, substantially like the British, which see.

BRITISH NORTH BORNEO

PROCLAMATION NO. VI OF [NOVEMBER 1,] 1893

I. This Proclamation may be cited as the Merchandize Marks Amendment Proclamation of 1893.

II. From and after the passing of this Proclamation a book shall be kept in one of the public offices or courts of the Territory and shall be called "The Register of Trade Marks."

III. Any person claiming the right to the exclusive use of any Trade Mark, either solely or jointly with others, may apply to the Governor for leave to register the same in the "Register of Trade Marks."

IV. Every such application must be accompanied by a *fac-simile* or specimen of the "Trade Mark" sought to be registered, verified by affidavit: and every such affidavit shall set forth the description and nature of the goods upon which such Trade Mark has hitherto been, or is intended to be used, and that the deponent is to the best of his belief entitled solely or jointly with some person or other persons therein named to the exclusive use of such Trade Mark.

V. Upon compliance with the formalities hereinbefore prescribed, it shall be lawful for the Governor, if he shall in his discretion think fit, to grant the application and to order the registration of the said Trade Mark in the register and the filing of all affidavits transmitted therewith in manner aforesaid.

VI. Notice of the registration of a Trade Mark under this Proclamation shall be published in the *Gazette,* and the Register of Trade Marks shall be open to public inspection, at all reasonable times, on payment of such fee as may be fixed in manner hereinafter mentioned.

VII. It shall be lawful for the Governor from time to time to make and vary rules or orders for the better carrying out of the provisions of this Proclamation and to fix and vary a scale of fees payable for the registration of Trade Marks, the inspection of the register, the filing of affidavits, the issuing of office copies and other incidental matters.

VIII. From and after the registration of a Trade Mark, all entries in the Register of Trade Marks and all affidavits filed under this Proclamation or an office copy of any such affidavit, or of any such entry in the register certified under the hand of any duly authorized Officer shall be admitted in all legal proceedings whatever, civil or criminal, as *prima facie* evidence of

the truth and correctness of the contents thereof respectively, and of the right therein appearing of the deponent solely or jointly with others, as the case may be, to the exclusive use of the Trade Mark therein referred to.

IX. It shall be lawful for the Governor, at any time and on such grounds as he shall think sufficient, to cancel the registration of any Trade Mark under this Proclamation.

X. This Proclamation and "The Merchandize Marks Proclamation of 1891"* shall be read together and construed for all purposes as one Proclamation.

XI. The following scale of fees to be charged under this Proclamation shall remain in force until it has been varied or amended by the Governor under Section VII.

Registration of Trade Mark.....	$5.00
Filing Affidavit	2.00
Inspection of Register.....	1.00
Office Copy of Entry.....	3.00
Copy of Affidavit if not over 100 words....	.50
Copy of Affidavit if over 100 words, for every additional folio of 100 words or part thereof	.25

*Substantially the same as Great Britain: Merchandise Marks Act, which see.

BULGARIA

LAW OF JANUARY 14/27, 1904

CHAPTER I

General Provisions

Article I. Any distinctive sign that serves to distinguish products of commerce or of industry shall constitute a trade mark within the meaning of the present law.

Trade marks may consist of:

1) The styles or firm names of merchants and manufacturers;

2) Facsimile signatures of merchants or manufacturers, as well as their monograms in special forms;

3) Arbitrary denominations not connected, in any way, with the nature of the article to which they are to be applied as trade mark;

4) Emblems, seals, vignettes, figures, reliefs, labels, wrappers or containers, forms of products, of their wrappers or of their containers, devices, borders;

5) Letters or numerals combined in a distinctive manner;

6) The name of an urban or rural property belonging to the person who employs it as the mark of his products, etc.

Art. 2. All the inscriptions that surround a trade mark or which are enclosed therein, such as:

a) The firm of a merchant, provided that said style does not itself form the trade mark;

b) The number, the volume, the measure, the weight, or the capacity of the goods;

c) The place or the country where the goods are manufactured or produced;

d) The manner in which they are made or produced;

e) The material of which they are made or produced, etc., shall constitute an integral part of the trade mark.

Art. 3. Trade marks may be individual or collective.

Art. 4. Trade marks may be printed, lithographed, photographed, modeled, engraved, inlaid, woven, pyrographed, reproduced or printed in any desired manner on stoppers, labels, containers and wrappers, on the articles themselves, and on their partial or entire wrapper.

Art. 5. The employment of a mark is not obligatory save in a case where the Minister of Commerce shall consider that the interests of commerce and of national industry require that certain objects shall be invested therewith. In this case, these

objects shall be, at the instance of the Ministry of Commerce and of Agriculture, delegated to this effect by a Council of Ministers, stipulated by princely ukase (decree).

ART. 6. The employment of marks is authorized even when they shall not be registered, provided that, by this fact, the interests of proprietors of marks already deposited may not be injured.

ART. 7. The registration of a trade mark shall not involve any responsibility as to the State concerning the novelty, originality, and distinct features that distinguish it from some previously registered trade mark. However, the Bureau of Industrial Property shall be bound to make a preliminary examination of the trade mark filed for registration and to refuse such registration in those cases provided for by the present law.

CHAPTER II

REGISTRATION OF MARKS

ART. 8. The registration of marks shall be effected in a special Bureau under the Minister of Commerce, Section of Commerce and of Industry, called "Bureau of Industrial Property."

The personnel of this Bureau shall be named according to the needs by the competent Minister, and this personnel shall be placed under the control of the Chief of the Section of Commerce and of Industry.

ART. 9. A trade mark shall be registered pursuant to an application to be forwarded to the Bureau of Industrial Property, written in Bulgarian, and containing an exact indication of applicant's name and surname, his occupation, and his place of residence, a clear and accurate description (in Bulgarian) of the trade mark with a list of those articles that are to be distinguished by such trade mark.

ART. 10. There must be joined to this application: three copies of the trade mark to be registered, made on strong and good paper, a *cliché* for its reproduction which must not exceed 10 x 8 x 2.2 cm. and other documents that may be necessary.

ART. 11. In the Provinces, the application, accompanied by the necessary documents, may be forwarded to the Prefect. The latter shall, after having indicated the date and the hour of its reception, address it, without delay, to the Ministry of Commerce and of Agriculture.

ART. 12. Applications for the registration of foreign trade marks shall be addressed directly to the Ministry of Commerce and Agriculture, Bureau of Industrial Property.

ART. 13. Applications for registration, as well as applica-

tions for renewal, shall be deposited personally by the interested parties or by their attorneys.

ART. 14. Marks belonging to Bulgarians or to Bulgarian subjects dwelling abroad, or to foreigners dwelling in Bulgaria, shall be registered under the same conditions as those of natives.

ART. 15. Trade marks of foreigners that reside without the Principality shall be registered under the same conditions as those of Bulgarians, provided that commercial treaties, or else the laws of the land to which said foreigners belong or in which they have their principal place of business, admit of reciprocity in favor of Bulgarian subjects.

ART. 16. Apart from the formalities provided for by the present law, the following requirements must also be complied with if the trade marks mentioned in the preceding article are to be registered:

The petition for registration must be accompanied:

1) By a certificate attesting that applicant has complied with the conditions provided in the law of the country to which he belongs for the protection of the mark;

2) A declaration to the effect that applicant will recognize the competency of the courts of the country in all questions concerning the trade mark; applicant shall also appoint some person residing in the Principality to take charge of the trade mark;

3) Marks shall not be protected to a greater extent nor for a longer period than in the country where they have been originally registered.

ART. 17. Decision granting or refusing the registration of a mark shall not be made by the Bureau less than five days nor more than fifteen days after that on which the application has been deposited in conformity with Arts. 11, 12 and 19.

ART. 18. If the mark deposited meets the conditions provided for by the present law, it shall be registered *ad hoc,* and a certificate attesting this proceeding shall be delivered to the interested party.

The certificate of registration shall be provided with a stamp of three levas.

Registration shall be made by class, according to the nature of the product. Each registration shall bear two numbers—a serial number and another of classification.

Once the above mentioned certificate is delivered, the mark, accompanied by the necessary indications, shall be published in a special bulletin forming a supplement to the *Official Journal.*

One of the copies of the registered mark shall be preserved, duly classified, in the Registers of the Bureau of Industrial

Property; the second copy shall be preserved in the Register of the Commercial and Industrial Museum, and placed at the disposition of the public; the third, affixed to the certificate of registration, shall be forwarded to the interested party.

ART. 19. At the time of the registration, the priority shall be attributed to him that is the first to forward his application to the Prefecture of the Department or to the Bureau of Industrial Property.

When two or more applications are made simultaneously, whether at the Prefecture of the Department or at the Bureau of Industrial Property, they shall follow the following order:

1) The applications of Bulgarian subjects or foreigners established in the Principality;

2) Those of Bulgarians established abroad;

3) Those of foreigners living in those countries admitting reciprocity;

4) Those of foreigners of other countries;

5) However, if, in any of the cases above enumerated, two or more applications shall have been presented simultaneously, there shall be considered as having been first deposited that which shall have required the longest time to arrive.

ART. 20. A tax of 50 levas gold shall be paid for each first deposit and 40 levas gold for each renewal.

Apart from this tax the applications must be provided with a stamp of 50 stotinki, and the annexes, with that provided for by the provisions of the Stamp Law.

The registration taxes shall be paid to the Office of the Public Cashier, whose receipt shall be joined to the application.

In case of the refusal of registration, the tax paid shall be refunded to the party, and mention thereof shall be made on the receipt.

Taxes relative to a mark that, for one reason or another, shall be in the course of time suppressed, shall not be refunded.

ART. 21. The intermediaries charged with requesting the registration of marks may only be persons enjoying, in the Principality, civil and political rights. The other conditions required of these intermediaries will be determined by the regulation relative to the execution of this law.

CHAPTER III

REFUSAL OF REGISTRATION

ART. 22. The Bureau of Industrial Property shall refuse the registration of a trade mark in the following cases:

1) If the information required by the law does not appear in the application, or if the necessary documents and annexes

are not included therewith;

2) If the Bureau finds that the three copies of the trade mark are not identical;

3) If the trade mark consists, entirely or partially, of signs contrary to good morals, to religion, or to public order;

4) If the trade mark consists of photographs or designs representing the effigy of the Sovereign or of members of his family, those of foreign Sovereigns or of their families, of the National Arms, or even if it contains, as constitutive elements, such designs or photographs, save in those cases where it can be proved that applicant has obtained permission to use certain escutcheons as annexes of his trade mark;

5) If the mark consists in photographs or drawings representing men of State, without their assent, or that of their legal representatives, unless ten years have gone by since the day of their decease;

6) If the trade mark contains the emblem of the Red Cross, its imitation, or the words "Tchérven Krest" (Red Cross) without the permission of this Society;

7) If it consists of or if it contains firms or names of private persons or of societies that the applicant has no right to use;

8) If it contains or consists of personal decorations that have nothing in common with the business for the products of which the mark is intended;

9) If the mark consists in or contains reproductions of medals, or if it refers to diplomas and honorable mentions that the depositor does not possess;

10) If the mark contains reproductions of medals and other decorations connected with applicant's business, and if they are so arranged as to overshadow the trade mark itself;

11) If the trade mark consists of or if it contains inscriptions that may give rise to the belief that the goods to which it is to be applied are of domestic origin;

12) Finally, if the mark is an infringement of a mark already registered, or the registration of which has already been applied for by a duly filed application, or if it is an imitation of a previously registered trade mark.

Art. 23. Native manufacturers or merchants that possess the first prize or the gold medal of any Universal Exposition are authorized to affix to their marks the State Arms, but in such a way that they shall not overshadow the mark itself.

Art. 24. The refusal to register a mark shall be communicated in writing to the interested party within the delay foreseen by Art. 17.

Art. 25. If the interested party is dissatisfied with the

decision of the Bureau, he may enter appeal, within the delay of one month from the day when the communication has been made to him, before the Tribunal of First Instance of the district where the demand has been deposited, which must decide definitely on the objection within a delay of one month.

After the expiration of the delay for appeal, the decision shall be considered as definitive, and shall become effective.

ART. 26. The Tribunal shall, before the examination of the question, inquire concerning the reasons that have led the Bureau to refuse the registration.

The Bureau shall give in writing, or orally, its explanations to the Tribunal.

ART. 27. The decision of the Bureau relative to the refusal to register a mark may only be tried before the courts.

CHAPTER IV

RIGHTS OF OWNERSHIP OF TRADE MARKS

ART. 28. After having been duly registered, the trade mark shall become the exclusive property of the one that has obtained the registration, provided that its ownership is not contested before the competent court within one year after the date of its registration.

ART. 29. The right of ownership to a trade mark shall be established by the certificate of registration that the Bureau of Industrial Property shall deliver to those entitled to it, according to Art. 18.

ART. 30. The right of ownership to a trade mark is connected with the business for which it has been registered. The discontinuance of the enterprise shall imply the extinguishing of all rights to the mark.

ART. 31. The right to the exclusive use of a mark derived from the right of ownership to said mark shall refer only to the article for which it has been particularly registered.

ART. 32. The right to the exclusive use of a mark shall endure for a term of ten years.

At the expiration of this term, the registration may be renewed for periods of ten years.

The renewal of the registration shall be effected in virtue of a written application filed in the Bureau during the course of the last year.

ART. 33. Only the owner of a registered mark has the right to insert near its border the words "Registered Trade Mark" or its abbreviation, in small letters, so as not to overshadow the mark itself.

ART. 34. The marks of products of establishments of the

State shall always be considered as registered.

ART. 35. The right of ownership to a mark may be assigned, at the same time as the enterprise for whose goods it serves as a distinctive sign, unless it has been agreed otherwise between the parties.

ART. 36. In order that such assignment may be valid as against third parties, it must be duly recorded in the Registers of the Bureau of Industrial Property.

ART. 37. Every assignment shall be effected in the Bureau of Industrial Property upon payment of a fee amounting to 30 levas gold. The assignment shall be exempt from said fee if the business and the mark pass to the wife or the minor children of the first owner of said mark.

ART. 38. For each transfer made in the Register, the Bureau shall deliver to the party interested the certificate referring thereto.

ART. 39. The registration of a mark shall be cancelled from the Registers of the Bureau:

1) If the right of ownership of such trade mark is contested with success before a competent court (Art. 28);

2) If within three months after the date of an assignment the interested party has not notified the Bureau, or if, having notified it, the tax provided for by Art. 37 has not been paid;

3) If the registration of a mark is not renewed within three months after the expiration of each term of ten years;

4) If the fact is established that its owner has ceased to use it for the purpose for which it has been registered, for a period of at least three years.

ART. 40. Marks whose registration is cancelled shall be declared of public domain.

ART. 41. At the end of the tenth year the Bureau shall notify the owner of a mark of the fact that the term of registration is about to expire.

However, the failure to notify the owner of a mark that the term for which the latter has been registered will soon expire shall constitute no reason that might be offered as excuse for the non-renewal of the registration.

ART. 42. A list of marks cancelled and of those that have been declared of public domain during the course of the preceding month shall be published each month in the *Bulletin* with indication of the reasons.

CHAPTER V

OFFENCES AND PENALTIES

ART. 43. There shall be considered as guilty of contra-

vention and shall be liable to the penalties provided by this law —except where it is proved that he has acted without bad faith— whoever:

a) Imitates a mark of another;

b) Uses a mark registered by another;

c) Employs an imitation of a mark previously registered;

d) Prepares stamps, *clichés,* machines, and other instruments specially intended for the imitation or counterfeiting of another mark;

e) Places on his goods false commercial inscriptions;

f) Employs the indication "Registered Trade Mark" or its abbreviation as a mark or as its annex;

g) Has at his disposal stamps, *clichés,* machines and other instruments intended for counterfeiting or imitating another mark;

h) Employs as a mark or puts on the papers of his establishment without having the right, the Arms of the Principality, those of the Princely House, or any imitation whatsoever of those Arms or the decorations of the State and their imitation, the portraits of the Sovereign or of members of his family;

i) Employs, without having authority, the emblem of the "Red Cross," its imitation, or the denomination "Tchérven Krest" (Red Cross), or the portraits of men of state or public men;

k) Allows to figure upon his goods, upon the wrappers, or upon the containers, medals, diplomas, honorable mentions, that he does not possess, or their imitation, or which, if he does possess them, represents them in colors other than their real colors;

l) Employs, in general, any kind of inscription or denomination that may wrongly give rise to the belief that the goods are of domestic origin.

ART. 44. He shall be considered also guilty of infraction of the present law that shall sell, exhibit or possess with intent to sell, or for any commercial or industrial purpose whatsoever, goods or objects bearing one of the inscriptions or insignia enumerated in paragraphs b, c, e, f, h, i, k, l of the preceding article, unless he proves:

a) That, notwithstanding all the steps that he has taken in order to avoid any contravention of the law, it was impossible for him to doubt, at the time of the infringement, the authenticity of the mark used or of the commercial inscription appropriated;

b) That, upon request made by the party damaged or in his name, he (the infractor) has furnished all the information

that it has been possible for him to furnish concerning the person that furnished him the goods or the objects in question;

c) That he has acted without culpable intention.

ART. 45. Persons guilty of the offences enumerated in Arts. 43 and 44 of the present law shall be punishable by a fine of from 500 to 4,000 levas, or by imprisonment of from three months to one year, to which a fine of 3,000 levas may also be added. Besides the penalties provided for in the preceding provision, the injured party may also demand from the offender indemnity for the damages and losses sustained. Upon request of the injured party, the delinquent may be condemned to the publication of the judgment, at his expense, in the *Official Journal* and in one of the local papers of greatest circulation.

ART. 46. In every case the Court may order the confiscation of any article, merchandise, or instrument, and, in general, of whatever may have assisted in accomplishing the offence.

ART. 47. The Tribunal that has condemned anyone by virtue of the present law may order the destruction of objects confiscated or their sale to the profit of a benevolent institution.

Marks or inscriptions that have occasioned the confiscation of objects shall be destroyed in the way that shall have been thought proper at the moment at which there has been decreed the sale of the objects on which or on the packages or receptacles to which they have been affixed.

ART. 48. Under the present law all suits in matters of infringement shall be tried in the Departmental Tribunals, as of first instance, pursuance to the rules of summary procedure.

ART. 49. Under the present law action for infringement shall be instituted in pursuance of a petition made by the interested party. However, in case of the infringements enumerated in paragraph d, e, g, k, l, of Art. 43, and of those infringements named in the same paragraphs that appear again in Art. 44, actions shall be instituted by the State.

The written minutes prepared in such cases by the authorities shall be immediately forwarded to the competent courts, which shall, first of all, take the measures necessary to confiscate those articles that have been the cause of the infringement.

ART. 50. In case of a repeated offence the penalty shall be doubled. If the crime is committed within a period of five years from the date of the first sentence, it shall be considered as constituting a repeated offence.

ART. 51. There shall not be prosecuted for infringing the present law salaried employees, servants and others that, in committing the infringement, have acted for the account of their masters established in the Principality.

ART. 52. The Customs Administration shall forbid the importation of goods bearing original or imitated marks of Bulgarian merchants or manufacturers or false commercial inscriptions.

Goods marked with the marks of merchants of this country may be admitted if they are intended for the owners of these marks, and if the place, the town, or the country where the goods have been bought or manufactured is clearly and legibly indicated in an indelible manner. The Customs Administration shall confiscate and deliver to the judicial authorities, together with the written testimony required, the marks imported by third persons.

The Customs Administration shall act as organ of the Ministry of Commerce and Agriculture and it shall come to agreement directly with the latter in all matters affecting the present law.

EXPLANATION OF THE PRINCIPAL WORDS AND TERMS EMPLOYED IN THE PRESENT LAW

ART. 53. In the application of the present law:

1. The signification of the word "Mark" is determined by the first article of the law;

2. The expression "Commercial Inscription" designates any inscription, declaration or other direct or indirect designation relative:

a) To the number, quantity, measure, volume or weight of objects;

b) To the locality or the country where the merchandise has been manufactured or produced;

c) To the mode of manufacture or production of merchandise;

d) To the material of which it is composed;

e) To the existence of patents, privileges or copyrights relative to objects on which the inscription is affixed;

3. The expression "False Commercial Inscription" signifies a commercial inscription deceitful in so far as it relates to the objects on which it is affixed, and embraces any alteration of a commercial inscription, by addition, by suppression or in any other manner, provided that this alteration renders the inscription false; the fact that a commercial inscription constitutes in itself alone a mark or part of a mark would not prevent such an inscription from being considered as a false commercial inscription in the sense of the present law;

4. The expression "merchandise" signifies anything that can be made the object of commerce or industry;

5. The expression "infringement" signifies the appropriation of the mark of another;

6. Any mark is "imitated" that has an analogy with a mark previously registered, destined for similar articles, and which is of a nature to lead into error the ordinary purchaser. In the appreciation of the measure in which one mark is an imitation of another, there must be taken into consideration not the differences of detail, but the analogies that exist between the two marks; one will judge not from the details, but from the entire aspect of the marks.

CHAPTER VI

Transitory Dispositions

Art. 54. As regards those trade marks registered in virtue of the Law of December 15, 1892, they shall become void within six months after the present law has taken effect.

Art. 55. If the owners of such trade marks desire to retain their right of ownership to the latter, they shall be bound to register them anew in conformity with the provisions of the present law, before the expiration of the above named term.

Art. 56. The fee of 12 levas paid in virtue of the Law of December 15, 1892, shall be deducted from the amount of the fee provided by the present law.

The certificate of the old registration shall be annexed to the application. In the absence of this document, the registration applied for will be considered as new and the entire tax will be demandable.

CHAPTER VII

Final Dispositions

Art. 57. The Law concerning Marks of Manufacture and of Commerce of December 15, 1892, the supplementary dispositions of December 20, 1893, the regulations for putting them in force, as well as all provisions in conflict with the present law, are abrogated.

Art. 58. The present law shall take effect three months after the publication in the *Official Journal.**

Art. 59. A regulation specially elaborated by the Minister of Commerce and Agriculture will determine the details of the application of the present law.

Art. 60. In case where, in the future, special Tribunals of Commerce may be instituted in the Principality, proceedings brought by virtue of this law will be triable before these tribunals.

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* January 27, 1904.

CANADA

TRADE MARKS AND DESIGNS* ACT, R. S. 1906

CHAPTER 71

Short Title

1. This Act may be cited as the Trade Mark and Design Act.*

General Interpretation

"Minister"

2. In this Act, unless the context otherwise requires, "Minister" means the Minister of Agriculture.

Division of Act

3. This Act is divided into three parts. Part I applies only to Trade Marks. . . . Part III is general and applies to both Trade Marks and Industrial Designs.

PART I

Trade Marks

Interpretation—Definitions

4. In this Part, unless the context otherwise requires,—

a) "general trade mark" means a trade mark used in connection with the sale of various articles in which a proprietor deals in his trade, business, occupation or calling generally;

b) "specific trade mark" means a trade mark used in connection with the sale of a class merchandise of a particular description.

What shall be deemed to be trade marks

5. All marks, names, labels, brands, packages, or other business devices which are adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description, manufactured, produced, compounded, packed or offered for sale by him, applied in any manner whatever either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same, shall, for the purposes of this Act, be considered and known as trade marks.

As to timber or lumber

6. Timber or lumber of any kind upon which labour has

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* All reference to designs omitted.

been expended by any person in his trade, business, occupation or calling, shall, for the purposes of this Act, be deemed a manufacture, product or article.

Seal and its use

7. The Minister may cause a seal to be made for the purposes of this Part, and may cause to be sealed therewith trade marks and other instruments, and copies of such trade marks and other instruments, proceeding from his office in relation to trade marks.

REGISTRATION

Register to be kept

8. A register shall be kept at the Department of Agriculture for the registration of trade marks.

Registration by Minister

9. Subject to the provisions of this Act, the Minister shall on application duly made in that behalf, register therein the trade mark of any proprietor applying for such registration in manner as provided by this Act in that behalf and by the rules and regulations made thereunder.

Nature of trade mark to be specified

10. Every proprietor of a trade mark who applies for its registration shall state in his application whether the said trade mark is intended to be used as a general trade mark or as a specific trade mark.

Minister may refuse to register trade mark in certain cases

11. The Minister may refuse to register any trade mark:

(*a*) if he is not satisfied that the applicant is undoubtedly entitled to the exclusive use of such trade mark;

(*b*) if the trade mark proposed for registration is identical with or resembles a trade mark already registered;

(*c*) if it appears that the trade mark is calculated to deceive or mislead the public;

(*d*) if the trade mark contains any immorality or scandalous figure;

(*e*) if the so-called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking.

Reference to the Exchequer Court

12. The Minister may in any case in the last preceding section mentioned, if he thinks fit, refer the matter to the Exchequer Court of Canada, and, in that event, such court shall have jurisdiction to hear and determine the matter, and to make an order determining whether and subject to what conditions, if any, registration is to be permitted.

How registration may be effected

13. Subject to the foregoing provisions, the proprietor of a trade mark may, on forwarding to the Minister a drawing and description in duplicate of such trade mark, and a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof, together with the fee required by this Act in that behalf, and on otherwise complying with the provisions of this Act in relation to trade marks and with the rules and regulations made thereunder, have such trade mark registered for his own exclusive use.

Exclusive right to trade mark

2. Thereafter such proprietor shall have the exclusive right to use the trade mark to designate articles manufactured or sold by him.

Certificate of registration

14. Upon any trade mark being registered under this Act, the Minister shall return to the proprietor registering the same one copy of the drawing and description forwarded to him with a certificate signed by the Minister to the effect that the said trade mark has been duly registered in accordance with the provisions of this Act; and the day, month and year of the entry of the trade mark in the register shall also be set forth in such certificate.

ASSIGNMENT

Trade marks may be assigned

15. Every trade mark register in the office of the Minister shall be assignable in law.

Entry

2. On the assignment being produced, and the fee by this Act prescribed therefor being paid, the Minister shall cause the name of the assignee, with the date of the assignment and such other details as he sees fit, to be entered in the margin of the register of trade marks on the folio where such trade mark is registered.

TIME LIMIT

Duration of general trade mark

16. A general trade mark once registered and destined to be the sign in trade of the proprietor thereof shall endure without limitation.

And of specific trade mark

17. A specific trade mark, when registered, shall endure for the term of twenty-five years, but may be renewed before the expiration of the said term by the proprietor thereof, or by his legal representative, for another term of twenty-five years, and so on from time to time; but every such renewal shall be

registered before the expiration of the current term of twenty-five years.

Cancellation of trade mark

18. Any person who has registered a trade mark may petition for the cancellation of the same, and the Minister may, on receiving such petition, cause the said trade mark to be so cancelled.

Effect of cancellation

2. Such trade mark shall, after such cancellation, be considered as if it had never been registered under the name of the said person.

RIGHT OF ACTION

Suit by proprietor

19. An action or suit may be maintained by any proprietor of a trade mark against any person who uses the registered trade mark of such proprietor, or any fraudulent imitation thereof, or who sells any article bearing such trade mark or any such imitation thereof, or contained in any package of such proprietor or purporting to be his, contrary to the provisions of this Act.

No suit unless trade mark is registered

20. No person shall institute any proceeding to prevent the infringement of any trade mark, unless such trade mark is registered in pursuance of this Act.

OFFENCES AND PENALTIES

Unlawful use of trade mark—Penalty

21. Every person other than the proprietor of any trade mark who, with intent to deceive and to induce any person to believe that any article of any description whatsoever was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark,—

(*a*) marks any such article with any trade mark registered under the provisions of this Act, or with any part of such trade mark, whether by applying such trade mark or any part thereof to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark; or

(*b*) knowingly sells or offers for sale any such article marked with such trade mark or with any part thereof;

is guilty of an indictable offence and liable for each offence to a fine not exceeding one hundred dollars and not less than twenty dollars.

To whom payable

2. Such fine shall be paid to the proprietor of such trade

mark together with the costs incurred in enforcing and recovering the same.

Suit by proprietor or his agent

3. Every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf and thereunto duly authorized.

WARRANTY UPON SALE

Warranty that trade mark is genuine

22. Upon the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee, be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of Part VII. of the Criminal Code.

. . . . . .

PART III

GENERAL

Rules, regulations and forms

39. The Minister may, from time to time, subject to the approval of the Governor in Council, make rules and regulations and adopt forms for the purposes of this Act respecting trade marks . . .; and such rules, regulations and forms circulated in print for the use of the public shall be deemed to be correct for the purposes of this Act.

Documents deemed valid

2. All documents executed according to the said rules, regulations and forms, and accepted by the Minister, shall be deemed to be valid so far as relates to official proceedings under this Act.

CLERICAL ERRORS

Correction

40. Clerical errors which occur in the drawing up or copying of any instrument under this Act respecting trade marks . . . shall not be construed as invalidating the same, but, when discovered, may be corrected under the authority of the Minister.

Inspection of registers

41. Any person may be allowed to inspect the register of trade marks . . .

Copies

2. The Minister may cause copies of representations of trade marks . . . to be delivered on the applicant for the same paying the fee or fees prescribed by this Act in that behalf.

PROCEDURE AS TO RECTIFICATION AND ALTERATION

Exchequer Court may rectify entries

42. The Exchequer Court of Canada may, on the information of the Attorney General, or at the suit of any person aggrieved by any omission, without sufficient cause, to make any entry in the register of trade marks . . . or by any entry made without sufficient cause in any such register, make such order for making, expunging or varying any entry in any such register as the Court thinks fit; or the Court may refuse the application.

Costs

2. In either case, the Court may make such order with respect to the costs of the proceedings as the Court thinks fit.

Questions to be decided

3. The Court may in any proceedings under this section, decide any question that may be necessary or expedient to decide for the rectification of any such register.

Trade mark . . . may be corrected by the court

43. The registered proprietor of any registered trade mark . . . may apply to the Exchequer Court of Canada for leave to add to or alter any such trade mark . . . in any particular not being an essential particular, and the Court may refuse or grant leave on such terms as it may think fit.

Notice to Minister

2. Notice of any intended application to the Court under this section for leave to add to or alter any such trade mark . . . shall be given to the Minister, and he shall be entitled to be heard on the application.

Consequent rectification of register

44. A certified copy of any order of the Court for the making, expunging or varying of any entry in the register of trade marks . . . or for adding to or altering any registered trade mark . . . shall be transmitted to the Minister by the Registrar of the Court, and such register shall thereupon be rectified or altered in conformity with such order, or the purport of the order otherwise duly entered therein, as the case may be.

EVIDENCE

No proof of signature of certificate required

45. Every certificate under this Act that any trade mark . . . has been duly registered in accordance with the pro-

visions of this Act, which purports to be signed by the Minister or the Deputy Minister of Agriculture shall, without proof of the signature, be received in all courts in Canada as *prima facie* evidence of the facts therein alleged.

Table of fees

46. The following shall be the fees in respect to registration under this Act which shall be paid to the Minister in advance, that is to say:—

On every application to register a general trade mark, including certificate.....	$30.00
On every application to register a specific trade mark, including certificate.....	25.00
On every application for the renewal of the registration of a specific trade mark, including certificate	20.00
. . . . .	
For a copy of every certificate of registration separate from the return of the duplicate	1.00
For the recording of every assignment....	2.00
For copies of documents not above mentioned, for every hundred words or for every fraction thereof.....	0.50
For each copy of any drawing or emblematic trade mark . . . the reasonable expense of preparing the same.	

Payable to Minister of Finance

47. All fees received by the Minister, under this Act, shall be paid over by him to the Minister of Finance.

Return of fees if application is refused

48. In case any trade mark . . . in respect of which application for registry is made under this Act shall not be registered, all fees paid the Minister for registration shall be returned to the applicant or his agent, less, in the case of trade marks, the sum of five dollars . . . which shall be retained as compensation for office expenses.

TIMBER MARKING ACT

CHAPTER 72

SHORT TITLE

1. This Act may be cited as the Timber Marking Act.

MARKS AND REGISTRATION

Persons engaged in lumbering to select, register and use proper marks

2. Every person engaged in the business of lumbering or the getting out of timber, and of the floating or rafting of the same on the inland waters of Canada, within the provinces of Ontario, Quebec and New Brunswick, shall, within one month after he engages therein, select a mark or marks, and cause such mark or marks to be registered in the manner herein provided.

Minister of Agriculture to register marks and deliver certificates

3. The Minister of Agriculture shall keep at the Department of Agriculture a book to be called the Timber Mark Register, in which any person engaged in the business of lumbering or getting out timber as aforesaid, may have his timber mark registered upon depositing with the Minister a drawing or impression and description in duplicate of such timber mark, together with a declaration that the same is not and was not in use, to his knowledge, by any person other than himself at the time of his adoption thereof.

On certain conditions—Certificates shall be evidence

(2) The Minister, on receipt of the fee hereinafter provided, shall cause the said timber mark to be examined, to ascertain whether it resembles any other mark already registered; and, if he finds that such mark is not identical with, or does not so closely resemble any other timber mark already registered as to be confounded therewith, he shall register the same, and shall return to the proprietor thereof one copy of the drawing and description, with a certificate signed by the Minister or the Deputy Minister of Agriculture, to the effect that the said mark has been duly registered in accordance with the provisions of this Act; and such certificate shall further set forth the day, month and year of the entry thereof, in the proper register; and every such certificate shall be received in all courts in Canada as evidence of the facts therein alleged, without proof of the signature.

Exclusive right to use registered mark

4. The person who registers such timber mark shall thereafter have the exclusive right to use the same, to designate the timber got out by him and floated or rafted as aforesaid; and he shall put the same in a conspicuous place on each log or piece of timber so floated or rafted.

Marks may be cancelled

5. Any person who has registered a timber mark may

petition for the cancellation of the same, and the Minister may, on receiving such petition, cause the said mark to be cancelled; and the same shall, after such cancellation, be considered as if it had never been registered under the name of the said person.

Registered marks assignable and how

6. Every timber mark registered at the Department of Agriculture shall be assignable in law; and, on the production of the assignment and the payment of the fee hereinafter mentioned, the Minister shall cause the name of the assignee, with the date of the assignment, and such other details as he sees fit, to be entered on the margin of the register of timber marks on the folio where such mark is registered.

Different marks to be used

7. If any person makes application to register, as his own, any timber mark which is already registered, the Minister shall give notice of the fact to such person, who may then select some other mark and forward the same for registration.

Prohibition against using another person's mark

8. No person, other than the person who has registered the same, shall mark any timber of any description with any mark registered under the provisions of this Act, or with any part of such mark.

Table of fees

9. The following fees shall be payable, that is to say:—

On every application to register a timber mark, including certificate.....	$2.00
For each certificate of registration not already provided for	0.50
For each copy of any drawing, the reasonable expenses of preparing the same.	
For recording any assignment.....	1.00

(2) Such fees shall be paid over by the Minister of Agriculture to the Minister of Finance, and shall form part of the Consolidated Revenue Fund of Canada.

Minister may make rules and adopt forms

10. The Minister may, from time to time, subject to the approval of the Governor in Council, make rules and regulations and adopt forms for the purposes of this Act.

OFFENCES AND PENALTIES

Failing to select, register and use proper marks by lumberman, etc.—Penalty

11. Every person engaged in the business of lumbering or getting out timber, and floating or rafting the same on the inland waters of Canada, within the provinces of Ontario, Que-

bec and New Brunswick, who fails, within one month after he engages therein, to select a mark or marks, and cause such mark or marks to be registered in the manner hereinbefore provided, or to put the same in a conspicuous place on each log or piece of timber so floated or rafted, shall incur a penalty of fifty dollars.

Marking timber with a mark registered by another—Penalty

12. Every person, other than the person who has registered the same, who marks any timber of any description with any mark registered under the provisions of this Act, or with any part of such mark, shall, on summary conviction before two justices of the peace, be liable, for each offence, to a penalty not exceeding one hundred dollars and not less than twenty dollars, which amount shall be paid to the proprietor of such mark, together with the costs incurred in enforcing and recovering the same.

Who may complain

(2) Every complaint of violation of this section shall be made by the proprietor of such timber mark, or by some one acting on his behalf and thereunto duly authorized.

CEYLON

ORDINANCE NO. 14 OF 1888

PROCLAIMED MARCH 25, 1889, AS AMENDED BY NO. 4 OF 1890, NO. 7 OF 1904, AND NO. 9 OF 1906

Short title. Commencement

1. This Ordinance may be cited as "The Trade Marks Ordinance, 1888," and it shall come into operation at such time as the Governor shall appoint by Proclamation to be published in the *Government Gazette.*

PRELIMINARY

Interpretation clause: "Person." "Registrar"

2. In and for the purposes of this Ordinance, unless the context otherwise requires:

"Person" includes a body corporate;

"Registrar" means the Registrar-General, and includes any officer in the Registrar-General's Department to the extent to which he may be authorized by general or special order by the Governor to discharge the duty of the Registrar under this Ordinance.

"Prescribed"

"Prescribed" means prescribed by the schedule to this Ordinance or by general rules under or within the meaning of this Ordinance.

"The court" means the District Court of Colombo.

"The Court"—"Trade mark"

2. (1) A "trade mark" must consist of or contain at least one of the following essential particulars:

a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

c) A distinctive device, mark, stamp, brand, heading, label, or ticket; or

d) An invented word or invented words; or

e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in sub-section (1) any letters, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such addi-

tional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered in the register.

(3) Provided as follows:

a) A person need not under sub-section (2) disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

b) Any special and distinctive word or words, letter, figure, or combination of letters and figures used as a trade mark before the coming into operation of this Ordinance may be registered as a trade mark under this Ordinance.

Registration of Trade Marks

Application for registration

3. (1) Any person claiming to be the proprietor of a trade mark may by himself or his agent apply to the Registrar for an order for the registration thereof.

(2) The application must be made in the prescribed form, and must be accompanied by not less than three representations of the trade mark.

(3) The applicant must state the particular goods or classes of goods in connection with which he desires the trade mark to be registered.

(4) The application must be left with, or sent by post to, the Registrar.

(5) The date of the delivery or receipt of the application shall be endorsed thereon, and recorded in the Registrar's office.

(6) When an applicant for the registration of a trade mark is out of the island at the time of making the application, he shall give the Registrar an address for service in the island, and if he fails to do so the application shall not be proceeded with until the address has been given.

Registrar may make order for registration

4. (1) Upon such application as aforesaid, the Registrar may, after such inquiry as he thinks fit, and subject to the provisions hereinafter contained, make an order authorizing the registration of the trade mark.

(2) When an order has been made under this section, the Registrar shall cause the trade mark to be registered in a book to be kept by him for that purpose, and to be called the Register of Trade Marks.

(3) The date of registration shall be recorded in the said

register.

Limit of time for proceeding with application

5. Where registration of a trade mark shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar shall give notice of the non-completion to the applicant or to his agent, and if at the expiration of fourteen days from that notice, or of such further time as the Registrar may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned.

Connection of trade mark with goods

6. A trade mark must be registered for particular goods or classes of goods.

Registration of a series of marks

7. When a person claiming to be the proprietor of several trade marks, which, while resembling each other in the material particulars thereof, yet differ in respect of (*a*) the statement of the goods for which they are respectively used or proposed to be used, or (*b*) statements of numbers, or (*c*) statements of price, or (*d*) statements of quality, or (*e*) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour

8. A trade mark may be registered in any colour or colours, and such registration shall, subject to the provisions of this Ordinance, confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

Advertisement of application

9. Every application for registration of a trade mark under this Ordinance shall, as soon as may be after its receipt, be advertised by the Registrar in the *Government Gazette* and in one or more of the local newspapers, unless the Registrar refuse to entertain the application.

Opposition to registration

10. (1) Any person may within one month, or such further time, not exceeding three months, as the Registrar may allow, of the advertisement of the application, give notice in duplicate to the Registrar of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant.

(2) Within one month after receipt of such notice, or such

further time as the Registrar may allow, the applicant may send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application; and if he does not do so shall be deemed to have abandoned his application.

3) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the Registrar may allow, the opposition shall be deemed to be withdrawn.

(4) If the person who gave notice of opposition duly gives such security as aforesaid, the Registrar shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the court.

(5) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may determine to be reasonable.

(6) Where the opponent is out of the island he shall give the Registrar an address for service in the island.

Case how brought before court

11. (1) When a case stands for the determination of the court under the provisions of the last preceding section, the Registrar shall require the applicant, within one month or such further time as the Registrar may allow, to make a written application to the court for an order that, notwithstanding the opposition of which notice has been given, the registration of the trade mark be proceeded with by the Registrar, or to take such other proceedings as may be proper and necessary for the determination of the case by the court.

(2) The applicant shall thereupon make his application or take such other proceedings as aforesaid, within the period of one month above named, or such further time as the Registrar may allow, and shall also within the like period give notice thereof to the Registrar.

(3) If the applicant shall fail to make such application or to take such other proceedings, of which failure the non-receipt by the Registrar of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Assignment and transmission of trade mark

12. A trade mark when registered shall be assigned and transmitted only in connection with the good-will of the business concerned in the particular goods or classes of goods for which

it has been registered, and shall be determinable with that good-will.

Conflicting claims to registration

13. Where each of several persons claims to be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined according to law; and the Registrar may require the claimants to submit their rights to the court.

Submission to court of conflicting claims—Settlements of special case

14. The manner in which the rights of such claimants may be submitted to the court shall, unless the court otherwise order, be by a special case, and such special case, which shall be subject to a stamp duty of one rupee, shall be filed and proceeded with in like manner as any other special case submitted to the court, or in such other manner as the court may direct. The special case may be agreed to by the claimants, or if they differ may be settled by the Registrar on payment of the prescribed fee.

Restrictions on registration

15. (1) Except where the court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2) Except as aforesaid, the Registrar shall not register with respect to the same goods or description of goods a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Further restriction on registration

16. It shall not be lawful to register as part of, or in combination with, a trade mark any words the use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

Power to provide for entry on register of common marks as addition to trade marks

17. (1) Nothing in this Ordinance shall be construed to prevent the Registrar entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

a) In the case of an application for registration of a trade mark used before the coming into operation of this Ordinance,

any distinctive device, mark, stamp, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

b) In the case of an application for registration of a trade mark not used before the coming into operation of this Ordinance, any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made.

(2) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(3) Any device, mark, stamp, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures which was or were, before the coming into operation of this Ordinance, publicly used by more than three persons on the same or a similar description of goods, shall, for the purposes of this section, be deemed common to the trade in such goods.

EFFECT OF REGISTRATION

Effect of application for registration

18. Application for registration of a trade mark shall be deemed to be equivalent to the public use of the trade mark, and the date of the application shall, for the purposes of this Ordinance, be deemed to be, and as from the twenty-second day of December, one thousand eight hundred and eighty-eight, to have been the date of registration.

Right of first proprietor to exclusive use of trade mark

19. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Ordinance.

Restrictions on actions for infringement, and on defence to action in certain cases

20. A person shall not be entitled to institute any proceeding in a civil court to prevent or to recover damages for the infringement of a trade mark, unless, in the case of a trade

mark capable of being registered under this Ordinance, it has been registered in pursuance of this Ordinance; or, in the case of any other trade mark in use before the coming into operation of this Ordinance, registration thereof, under this Ordinance, has been refused. The Registrar may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Certificate as to exclusive use, and costs thereon

20. (a) In an action for infringement of a registered trade mark the court or a judge may certify that the right to the exclusive use of the trade mark came in question, and if the court so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses, as between proctor and client, unless the court trying the subsequent action certifies that he ought not to have the same.

REGISTER OF TRADE MARKS

21. There shall be kept at the Registrar's office a book called the register of trade marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments, and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

Removal of trade marks after fourteen years unless fee paid

22. (1) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the Registrar shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the Registrar before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, the Registrar shall, at the expiration of one month from the date of the giving of the first notice, send a second notice to the same effect.

(2) If such fee be not paid before the expiration of such fourteen years, the Registrar may, after the end of three months from the expiration of such fourteen years, remove the mark from the register; and so from time to time at the expiration of every period of fourteen years.

(3) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the Registrar may, without removing such trade mark from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5) Where a trade mark has been removed from the register for non-payment of the fee, or otherwise, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

GENERAL

Trust not to be entered in register

23. There shall not be entered in the register kept under this Ordinance, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.

Refusal to register in certain cases

24. The Registrar may refuse to register a trade mark of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in register

25. Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, the Registrar shall, on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the trade mark in the register of trade marks. The person for the time being entered in the register of trade marks as proprietor of a trade mark shall, subject to the provisions of this Ordinance and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such trade mark may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from register

26. The register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance and to such regulations as may be prescribed; and certified copies, sealed with the seal of

the Registrar's office, of any entry in any such register shall be given to any person requiring the same, on payment of the prescribed fee.

Sealed copies to be received in evidence

27. Printed or written copies or extracts purporting to be certified by the Registrar, and sealed with the seal of the Registrar's office, of or from any document, register, and other book filed or kept under this Ordinance in the said office, shall be admitted in evidence in all courts in this colony, and in all proceedings, without further proof or production of the originals.

Rectification of register by court

28. (1) The court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person from the register kept under this Ordinance, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry as the court thinks fit; or the court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the court thinks fit.

(2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the court rectifying a register shall direct that due notice of the rectification be given to the Registrar.

Power to correct clerical errors

29. The Registrar may, on request in writing, accompanied by the prescribed fee—

a) Correct any clerical error in or in connection with an application for the registration of a trade mark; or

b) Correct any clerical error in the name, style, or address of the registered proprietor of a trade mark; or

c) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by an affidavit made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark;

d) Permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered.

Alteration of registered trade mark

30. (1) The registered proprietor of any registered trade

mark may apply to the court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Ordinance; and the court may refuse or grant leave on such terms as it may think fit.

(2) Notice of any intended application to the court under this section shall be given to the Registrar by the applicant; and the Registrar shall be entitled to be heard on the application.

(3) If the court grants leave, the Registrar shall, on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Applications to be stamped

31. Every application made to the court under section 11, 28, or 30 shall be subject to a stamp duty of one rupee, and all proceedings thereunder shall be conducted in such manner as the court may direct.

Stamp duties

32. The minimum stamp duties chargeable in the district courts in civil proceedings under the provisions of the Ordinance for the time being in force relating to stamps shall, so far as the same may be applicable and except as herein otherwise provided, be charged in all proceedings in the court under this Ordinance. But in no case shall the Registrar be required to use any stamp or be charged with any stamp duty.

Appeal

33. Every judgment or order by the district court under this Ordinance shall be subject to an appeal to the Supreme Court, and such appeal shall be subject to the same rules which govern interlocutory appeals from district courts; and the minimum stamp duties chargeable in the Supreme Court under the provisions of the Ordinance for the time being in force relating to stamps shall, so far as the same may be applicable, be charged in all proceedings relating to or in connection with such appeal.

Exercise of discretionary power by Registrar

34. When any discretionary power is by this Ordinance given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Registrar may take directions of law officers

35. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Ordinance, apply to the Attorney-General or Solicitor-General for directions in the matter.

Certificate of Registrar to be evidence

36. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Ordinance, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post

37. (1) Any application, notice, or other document authorized or required to be left with or sent to the Registrar, or to any other person under this Ordinance, may be sent by a registered letter through the post; and if so sent shall be deemed to have been so left or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and registered at the post office.

Provisions as to public holidays

38. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document with, or paying any fee to the Registrar, shall fall on a public holiday, it shall be lawful to leave such document or to pay such fee on the day next following such public holiday, or holidays, if two or more of them occur consecutively.

Case of infant, lunatic, &c.

39. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any affidavit or doing anything required or permitted by this Ordinance, or by any rules made under the authority of this Ordinance, then the guardian of such incapable person, or if there be none, any person appointed by any court possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making of such affidavit or doing such thing, may make such affidavit, or an affidavit as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person; and all acts done by such substitute shall, for the purposes of this Ordinance, be as effectual as if done by the person for whom he is substituted.

39. (a) There shall be paid, in respect of applications and registration and other matters under this Ordinance, such fees as may from time to time be prescribed by the Governor in Executive Council.

Governor may make rules, &c., under this Ordinance

40. (1) The Governor in Executive Council may from time to time make such general rules, prescribe such forms, and do such things as he thinks expedient, subject to the provisions of this Ordinance—

a) For regulating the practice of registration under this Ordinance;

b) For classifying goods for the purposes of trade marks;

c) For prescribing the fees payable in respect of applications and registration and other matters under this Ordinance, and the mode of payment of the same;

d) Generally for regulating all things by this Ordinance placed under the direction or control of the Registrar.

(2) Any rules made in pursuance of this section shall be published in the *Government Gazette,* and it shall be lawful for the Governor in Executive Council, by Proclamation to be published in the *Government Gazette,* to alter, amend, or revoke any such rules.

International arrangements for protection of trade marks

41a. If His Majesty is pleased by Order in Council to apply the provisions of section 103 of "the Patent, Designs, and Trade Marks Act, 1883,"* to Ceylon, then any person who has applied for protection for any trade mark in the United Kingdom or in any foreign state with the Government of which His Majesty has made an arrangement under the said section for the mutual protection of trade marks shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants; and such registration shall have the same date as the application in the United Kingdom or such foreign state, as the case may be.

(2) Such application shall be made within four months from such person applying for protection in the United Kingdom or in the foreign state with which the arrangement is in force.

(3) Nothing in this section contained shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in this colony.

(4) The use in Ceylon of a trade mark during the period aforesaid shall not invalidate the registration of the trade mark.

(5) The application for the registration of a trade mark under this section shall be made in the same manner as an ordinary application under this Ordinance, but any trade mark

* Section 91 of British "Patents and Designs Act, 1907" (which see), is substantially the same as Section 103 of the Act of 1883 (repealed).

the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(6) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council shall have declared the provisions of the aforesaid section 103 of the above recited Imperial Act to be applicable, and so long only, in the case of each state, as such Order continues in force with respect to that state.

Provision for intercolonial arrangements

41b. Whenever it appears to the Governor in Executive Council that the Legislature of any British Possession has made satisfactory provision for the protection in such possession of trade marks registered in Ceylon, the Governor in Executive Council may by Proclamation apply all or any of the provisions of the last preceding section relating to the protection of trade marks registered in the United Kingdom with such variations or additions (if any) as to the Governor in Executive Council shall seem fit to trade marks registered in such British Possession.

(2) An Order in Council under this section shall from a date to be mentioned in the Order take effect as if its provisions had been contained in this Ordinance, but the Governor in Executive Council may revoke any such order.

OFFENCES

Offences. Falsification of entries in register

42. (1) If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence, and punished with simple or rigorous imprisonment for a term not exceeding seven years.

Falsely describing trade mark as registered

(2) Any person who describes any trade mark applied to any article sold by him as registered, which is not so, shall be guilty of an offence, and liable on conviction to a fine not exceeding fifty rupees. A person shall be deemed, for the purposes of this section, to describe that a trade mark is registered if he sells the article with the word "registered" or any word or words expressing or implying that registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Unauthorized assumption of royal arms

(3) Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connection with any trade, business, calling, or profession the Royal Arms or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred rupees.

Offences non-cognizable and bailable

43. All offences under this Ordinance are hereby declared to be "non-cognizable" and "bailable," within the meaning of those terms as defined in section 3 of "The Criminal Procedure Code, 1883."

CHANNEL ISLANDS

(GUERNSEY — JERSEY)

No trade mark law.

Trade Marks are recorded on application being made on motion to the Royal Court of Justice.

CHILE

LAW OF NOVEMBER 12, 1874

ARTICLE 1. There shall be opened a Register for inscribing marks of manufacture or of commerce, national or foreign.

ART. 2. There shall be designated under the name of marks of manufacture those that are affixed to objects produced or manufactured in Chile or abroad by industrials or agrarians, and under the name of commercial marks those that a merchant shall adopt for placing upon the objects that he shall sell.

ART. 3. There shall be considered as marks or labels of manufacture or of commerce proper names, the emblems, and any other sign, that a manufacturer or merchant shall adopt for distinguishing the objects that he manufactures or sells.

However, labels of manufacture shall bear for legal effects the inscription "Marca de Fábrica" (mark of manufacture), or simply the initials "M. de F.," and marks or labels of commerce, the inscription "Marca Comercial" (commercial mark), or even the initials "M. C."

ART. 4. The name of a rural estate, mill, foundry, factory, shall be of the exclusive use of the owner of the estate, mill, foundry or factory.

ART. 5. He who shall inscribe in the Register a mark of manufacture or of commerce shall have the exclusive ownership thereof.

ART. 6. The transfer that shall be made of a mark or the permission that is granted in order that another may make use thereof shall be entered in the Register, subject to notification to the public, by means of advertisements for ten days.

ART. 7. The registration of marks of manufacture or of commerce must be renewed every ten years, and, in case of the new registration not being effected, it shall be deemed as abandoned.

ART. 8. The Register to which Art. 1 refers shall be opened in the Office of the National Society of Agriculture, under the direction of the President thereof or of a delegate named by the Council. In this latter case the nomination of the delegate must be made from one of the members of the Directive Council of said Society.

ART. 9. The entry in the Register shall contain the day and the hour on which the registration was made; the name of the owner, his profession and domicile; the place in which the

factory is located; the class of industry or commerce for which the mark is intended to serve, as, likewise, a facsimile thereof. There shall be added, in addition, to the inscription the serial number that corresponds to the mark deposited and also other indications that may be deemed necessary. The entry in the Register, as well as the copy that shall be delivered to the interested party, shall be signed by the President of the National Society of Agriculture, or his delegate, by the party interested, and two witnesses.

ART. 10. There shall be paid as fee to the National Society of Agriculture twelve pesos for the registration of a mark of manufacture, three pesos for that of commerce, and one peso for the copy authorized for either.

ART. 11. He that shall falsify, simulate, or fraudulently use, the marks or labels of which the present law makes mention shall suffer the penalties that the Penal Code shall designate.

ART. 12. Objects bearing counterfeit marks shall be confiscated to the benefit of the injured party. The instruments of falsification shall be destroyed.

ART. 13. Every year, in the month of August, there shall be published in the official periodical a list of the marks that shall have been registered.

LAW OF OCTOBER 24, 1898

SOLE ARTICLE. In the proceedings instituted to enforce the responsibility established by Art. 11 of the Law of November 12, 1874, the Tribunals shall decide upon moral evidence according to their conscience whether the counterfeiting, adulteration or fraudulent use of the trade mark has or has not been committed, even though it appears *prima facie* that the registered mark and the one which gave occasion to the proceedings are different.

CHINA

China has no trade mark law. A measure of protection is nevertheless obtainable.

In pursuance of the United States-China Treaty for the extension of commercial relations between the two countries, ratified at Washington January 13, 1904, China promulgated in October of the same year a trade mark law which was found to be unsatisfactory, and almost immediately withdrawn. Up to the present no further law has been enacted.

Provision was made, however, for the deposit of trade marks, pending the enactment of a law, with the Chinese Maritime Customs at Shanghai and Tientsin as Branch Offices of the Trade Mark Department of the Board of Agriculture and Commerce. The Branch Offices receive, through the respective Consulates of the applicants, applications for provisional registration, assigning to each application received a particular number and date of its deposit. Deposit, by number and date, is also made in the office of the Consulate.

The registration above outlined, it should be noted, is effective as claim to exclusive rights in a mark only as against Chinese citizens in view of the fact that, as the principle of extraterritoriality exists in China, every foreign citizen or subject is amenable only to the laws of his own country. Protection of trade marks against infringement by foreigners, therefore, depends upon agreements between the several nations. The United States is in agreement with Japan by treaty and with Great Britain, Germany, France, Belgium, Denmark, Sweden, Holland, and Italy by exchange of notes. So much of the United States-China Treaty of 1904 as relates to the protection of trade marks is printed in this work, as is also the United States-Japan Treaty of 1908.

CHINA-UNITED STATES TREATY

RATIFICATIONS EXCHANGED AT WASHINGTON, JANUARY 13, 1904; PROCLAIMED, JANUARY 13, 1904

. . . . . .

ART. IX. Whereas the United States undertakes to protect the citizens of any country in the exclusive use within the United States of any lawful trade marks, provided that such

country agrees by treaty or convention to give like protection to citizens of the United States:—

Therefore the Government of China, in order to secure such protection in the United States for its subjects, now agrees to fully protect any citizen, firm or corporation of the United States in the exclusive use in the Empire of China of any lawful trade mark to the exclusive use of which in the United States they are entitled, or which they have adopted and used, or intend to adopt and use as soon as registered, for exclusive use within the Empire of China. To this end the Chinese Government agrees to issue by its proper authorities proclamations, having the force of law, forbidding all subjects of China from infringing on, imitating, colorably imitating, or knowingly passing off an imitation of trade marks belonging to citizens of the United States, which shall have been registered by the proper authorities of the United States at such offices as the Chinese Government will establish for such purpose, on payment of a reasonable fee, after due investigation by the Chinese authorities, and in compliance with reasonable regulations.

. . . . . .

JAPAN-UNITED STATES TREATY

RATIFICATION EXCHANGED AT TOKIO, AUGUST 6, 1908; PROCLAIMED, AUGUST 11, 1908

ARTICLE I. . . . trade marks duly . . . registered by citizens or subjects of one High Contracting Party in the appropriate office of the other Contracting Party shall have in all parts of China the same protection against infringement by citizens or subjects of such other Contracting Party as in the dominions and possessions of such other Contracting Party.

ART. II. . . . . .

ART. III. In case of infringement in China by a citizen or subject of one of the two High Contracting Parties of any . . . trade mark . . . entitled to protection in virtue of this convention the aggrieved party shall have in the competent territorial or consular courts of such Contracting Party the same rights and remedies as citizens or subjects of such Contracting Party.

ART. IV. Each High Contracting Party engages to extend to the citizens or subjects of the other Contracting Party the same treatment in China in the matter of protection of their commercial names as they enjoy in the dominions and possessions of such Contracting Party under the convention for the protection of industrial property signed at Paris March 20,

1883. "Hong" marks shall be considered to be commercial names for the purpose of this convention.

ART. V. Citizens of possessions belonging to the United States and subjects of Korea shall have in China the same treatment under the present convention as citizens of the United States and subjects of Japan respectively.

ART. VI. It is mutually agreed between the High Contracting Parties that the present convention shall be enforced so far as applicable in any other country in which either Contracting Party may exercise extraterritorial jurisdiction.

All rights growing out of the present convention shall be recognized in the insular and other possessions and leased territories of the High Contracting Parties and all legal remedies provided for the protection of such rights shall be duly enforced by the competent courts.

ART. VII. Any person amenable to the provisions of this convention who possesses at the time the present convention comes into force merchandise bearing an imitation of a trade mark owned by another person and entitled to protection under said convention shall remove or cancel such false trade mark or withdraw such merchandise from market in China within six months from the date of the enforcement of this convention.

ART. VIII. . . . . .

ART. IX. The present convention shall be ratified and the ratifications thereof shall be exchanged at Tokyo as soon as possible. It shall come into force together with the convention relative to the protection of inventions, designs, trade marks and copyrights in Korea, ten days after such exchange of ratifications.

COLOMBIA

LAW [NO. 110] OF DECEMBER 10, 1914

SECTION 1

MARKS OF MANUFACTURE, COMMERCE, AND AGRICULTURE

Preliminaries

ARTICLE 1. Every natural or legal person, of Colombian or foreign nationality, has the right to distinguish his wares, manufactured, commercial, or agricultural, by means of marks, and to register these in conformity with the present law.

ART. 2. Marks are domestic or foreign: those that are first deposited or registered in Colombia are domestic. Those that, having been previously registered in another country, are later registered in Colombia are foreign.

Foreign marks shall enjoy, through registration, the same rights as the domestic, if, in the country where the article was produced or manufactured, Colombian marks enjoy the same protection, save stipulation in public treaties.

ART. 3. There may be used as marks:

The designations of objects and the names of persons, provided they are invested with a special form; emblems, monograms, coats of arms, cuts, stamped designs, vignettes, seals, crests, reliefs, borders, figures, fancy or arbitrary names; numbers, letters, words, and phrases, when they are invested with a special form; wrappers, packages, or containers of the objects, and any other features that serve to distinguish the manufactures of a factory; the products of the agricultural or extractive industries, or articles of commerce.

ART. 4. There shall not be considered as marks, and, consequently, shall not be registered:

Letters, words, names or attributes that the entities of government use; the arms and emblems of the same entities; either the form or the color that is given to articles by the manufacturer; the names or phrases that may have passed into common use, and features that do not present characteristics of specialty or novelty; designations commonly employed to indicate the nature of the products or the class to which they belong; designs or expressions contrary to public morals; the name of a natural or legal person, if it be not presented in a particular and distinctive form.

The names and coats of arms of entities and the portraits of persons shall not be used as marks, nor shall be registered,

without their consent or that of their heirs.

Neither shall there be used or registered a mark already registered or used by another, if it be intended for articles of the same nature as those evidenced by the mark already registered, since it may be presumed that it tends to imitate the mark already registered.

There shall neither be used nor registered as a mark of commerce or agriculture, a mark already registered as a mark of manufacture, nor *vice versa.*

Neither shall there be used or registered as a mark of commerce or of agriculture a mark similar to another already registered or used as a mark of manufacturer, nor *vice versa.*

The names of localities of private domain may be used as marks only by the proprietors of said localities, unless these names may have entered into general use, or sufficiently clear descriptions be adopted to avoid confusion.

Geographical names, when they constitute an essential part of the mark, ensigns, pennants, arms, special, commercial or maritime insignia of nations, may only be used to indicate the origin of an article or of a product.

SECTION 2

Ownership and Use of Marks

Art. 5. Marks give to their owners the exclusive right to use them, under the conditions that will be explained hereafter. This right will be justified by means of certificates issued by the Executive Branch of the Republic under the name of Register of Marks, and in the form that this law prescribes.

Art. 6. He is the exclusive owner of a mark that has first made use of it to distinguish his articles or products, but the mark shall not enjoy the rights and guaranties that this law confers if it be not registered with all the formalities therein indicated.

Art. 7. The ownership of a mark consists in the right to use it exclusively on the articles and products for which it is intended, and on others of the same nature, by the same manufacturer, merchant, or producer; in the right to oppose the use and registration of any other that may create, directly or indirectly, confusion concerning the articles or products guaranteed by it; and in the right to assign or transfer its use to other persons.

Art. 8. The mark shall necessarily be used on the article or product for which it is intended. If it be not used within two years, counted from the date of the registration, or if it cease to be used for one continuous year, the right shall lapse.

But, if the mark be foreign, the immediate importation of the article into the national territory is not necessary, and it shall not lapse if it be used on the article or product for which it is intended outside the Republic within the term specified.

ART. 9. The mark may be affixed to the manufactures or products; to the containers, packages, catalogues, prospectuses, etc., and may be used in different sizes.

ART. 10. If a mark of manufacture be not deposited and registered, no right of ownership is presumed against third parties.

SECTION 3

REGISTRATION OF MARKS

ART. 11. Any person, natural or legal, of Colombian or foreign nationality, owner of a mark, may acquire the exclusive right to use it throughout the Republic, by virtue of the formality of registration or inscription in the respective Ministry, for which the party interested shall address the Ministry in person or through an attorney in an application for registration.

The application shall be made on stamped paper, and there shall be mentioned therein the name and domicile of the owner of the mark; the name and domicile of the attorney, when the request is made by proxy; a detailed statement or description of the mark in the Spanish language, specifying with all distinctness the essential part of the mark or its principal distinctive feature; the manufactures, products, or objects for which the mark is intended; the nationality of the mark, in case it may have been already registered or deposited in another country, and the country and the city or place from which the articles or products originate on which the mark is going to be used or is being used.

With the application there shall be included:

(1) The power of attorney if the application is made through intermediary of an attorney;

(2) Three examples, at least, of the mark that is to be registered; each one of the sheets of these examples shall bear a national stamp of the value of ten centavos;

(3) A small cut (*cliché*) of wood or metal that may be used in the official journal, of the depth of the type that is used in printing and that shall not be more than twelve centimetres in width. When the mark consists of a strip of a length greater than twelve centimetres, or of a collection of symbols, this strip and the symbols may be divided into various parts that shall be reproduced in another *cliché* or *clichés* of the same dimensions, that shall be printed in rotation, or be reduced, diminished

proportionately, into a single *cliché;*

(4) The consent in writing of the person, when his name or portrait or the facsimile of his signature constitutes the mark or the distinctive feature of the mark that it is desired to register in the name of another person; this consent shall be written on stamped paper, or on common paper, with a stamp of ten centavos; and

(5) The receipt of the General Treasury of the Republic in which it is evidenced that the fees prescribed by law have been paid.

ART. 12. The application being presented, the Registry Clerk of the Ministry shall enter at its bottom and in the corresponding registry book a memorandum in which is shown the day and the hour of the presentation of the application, and the number of folios in it. Said memorandum shall be signed by the Registry Clerk and the party interested.

ART. 13. If the application be in accord with the article, the Minister, whom the Secretary shall inform concerning the particulars by writing at the bottom of the application, shall order that this and the *cliché* shall be published in the *Diario Oficial* three times, and at the cost of the party interested, and, on the expiry of sixty days, counted from that following the one of the last publication, and provided there may not have been entered legal opposition against the registration, shall decide that this be recorded in the corresponding book.

PARAGRAPH. If the application be not in legal form, the Minister shall order that it be returned to the party interested in order that he make the corrections in the matter, or that he include the pieces that are lacking of those required by law.

ART. 14. If any one shall allege that the mark that it is desired to register, or that is already registered belongs to him on the ground of having been the first that has publicly and conspicuously used it within the past five (5) years, he may oppose its registration or request that the registration be cancelled, if the mark should already be registered. The Minister, in these cases, shall send the application of the opponent and the minutes of the affair to the division of Judges of the Circuit of Bogotá in order that the matter of opposition be decided in a summary judgment. The term for evidence for the summary judgment may be extended up to ten days longer than that indicated in the Judicial Code for these decisions, provided one of the parties requests it.

Appeals in these decisions shall be made before the Superior Tribunal, in agreement with the general rules.

PARAGRAPH. This same procedure shall be followed in cases

of opposition to the registry of a mark that, according to the terms of the present law, may be a falsification or imitation of another already registered.

ART. 15. The sentence rendered in decisions concerning opposition or application for cancellation of registration having been announced, an extract from it shall be published in the *Diario Oficial,* at the cost of the successful party, and the Judge shall return to the Ministry the original record for its corresponding execution.

ART. 16. When the sentence that is rendered in these summary judgments is in favor of the party that opposes the registration of the mark, continuance shall not be given to the application for registration, if it concerns a mark already registered. In this sentence there shall be imposed on the losing party the payment of the judicial costs.

ART. 17. In cases in which there be no opposition to the registration of the mark, or in which the right of the opposition may be rejected by the Judge, the registration shall be carried out and there shall be forwarded to the party interested a certificate of registration, a certificate that shall establish the legal title to ownership of the mark, and that shall be published once in the *Diario Oficial.*

This certificate shall be drawn up on stamped paper, and shall bear the signature of the Minister and the seal of the Ministry and the annotation of the Chief of the corresponding Section as having entered the certificate in the corresponding book of marks.

ART. 18. In the same Resolution in which the Ministry shall order the registration of a mark, it shall direct that the records be filed and that there be sent to the party interested the copies that he may request. One of the examples of the mark, duly annotated, shall be returned to the applicant in order that he may attach it to the certificate of registration.

ART. 19. The Resolution concerning the registration of a mark shall be transcribed verbatim in a book for the registry of marks, with indication of the date, and the Secretary of the Ministry shall certify at the bottom that it is the authentic copy of the Resolution directed by the Minister, and shall indicate the number of the record in which appear the original proceedings.

ART. 20. The registration of a mark holds valid for only twenty years, which expired, it shall lapse if renewal be not opportunely requested. Each renewal shall last for twenty (20) years. Every registration may be renewed before it lapses and provided that the fees prescribed in this law for the renewal have

been paid. The corresponding receipt of the fees having been paid into the General Treasury of the Republic being presented, there shall be noted, in the book for registration, and at the bottom of each registration the renewal of the mark, and there shall be given to the party interested a certificate of renewal.

ART. 21. The effects of the registration shall retroact to the date on which it was applied for.

ART. 22. Every mark may be inherited and be assigned.

ART. 23. A mark may be transferred only with the industry to which the article for which it is intended belongs, and the sale of the industry shall include necessarily the assignment of the mark, save stipulation to the contrary. Every assignment of a mark shall be entered in the books for registrations, and, if the annotation be not made, the assignment of the mark will have no validity.

ART. 24. The registration of marks shall be made without prior examination, that is to say, without ascertaining the utility of the object and the character and qualities or properties of the products for which they are intended, on the sole responsibility of the party interested, and leaving in every case without prejudice the rights of third parties.

ART. 25. If the process for making a mark be a secret, and the party interested should wish to keep it in reserve, he shall so state it in his application, and shall describe the process in a sealed sheet, a sheet that shall be opened only in case of litigation.

ART. 26. The allowance of a registration for marks shall incur, in favor of the Public Treasury, a fee of fifteen pesos, gold, for each mark, a fee that the party interested shall deposit previously in the General Treasury of the Republic, on making the application for registration.

PARAGRAPH. When the registration of a mark is rejected by the Ministry by virtue of the sentence decreed in summary judgment, in cases of opposition to the registry of said mark, the applicant for registration shall forfeit in favor of the National Treasury half of the fees deposited in the Treasury.

ART. 27. The renewal of registration of a mark shall incur a fee of thirty ($30) pesos, gold, and the certificate of the fact that a mark has been assigned, a fee of ten ($10) pesos, gold.

ART. 28. The powers conferred abroad to solicit the registration of marks, or patents of invention, shall be authenticated by the respective Minister or Consular Agent of the Republic in the place where they are executed, or by the Minister or Consular Agent of a friendly nation, in case Colombia may not have

accredited such officials in the country where the constituent resides.

SECTION 4

Penalties

Art. 29. Those shall be punished with a fine of from fifty to five hundred ($50 to $500) pesos, and imprisonment of from three (3) months to one (1) year:

(1) That falsify or imitate an original mark;

(2) That sell or offer for sale, buy or maintain, imitated or falsified marks;

(3) That sell or offer for sale, or buy, original marks without the consent of the owner, which is presumed when there be a protest on the part of the latter;

(4) Those that affix to articles that they manufacture or produce, or to objects with which they trade, a mark legally registered in favor of another person, without the consent of the owner, which is presumed when there be protest on the part of this latter;

(5) Those that knowingly buy, sell or offer for sale articles, products or merchandise that bear the imitated or falsified mark, which is presumed if it be found on said articles, products, or merchandise in their establishments, stores, or warehouses;

(6) Those that use on their articles, products or merchandise, marks that contain false indications concerning the nature, quantity, quality, source and origin; or that falsely claim that they have been rewarded with titles, medals, diplomas or other distinctions, in expositions, competitions, etc., or that indicate that the marks have been legally registered, such not having been the case;

(7) Those that affix to their articles, products or merchandise, a mark that, even if it belong to them and be legally registered, resembles another mark, due to some addition, elimination or modification;

(8) Those that, without imitating or falsifying a mark, remove or separate it from certain articles to affix it to others;

(9) Those that refill with spurious products containers bearing another's mark; those that refill with products that do not correspond with the genuineness as proclaimed in the mark that the container bears; those that mix genuine products that have original marks with others, foreign or spurious, and those that knowingly keep or sell said products. This last will be presumed if the said objects be found in their stores, shops, warehouses or establishments.

Art. 30. He shall be punished with a fine of from twenty

($20) to two hundred ($200) pesos, and imprisonment of from one (1) to three (3) months:

(1) That makes use on his articles, products or merchandise of a mark that, without being totally falsified or imitated, by its simple appearance or by its inscriptions, combination of colors or other circumstances, may lead the public to error concerning the source, quality, quantity, weight or origin of said articles, products or merchandise; and

(2) That knowingly sells, offers for sale, or in any manner places in circulation articles, products or merchandise with marks that have the irregularities regarding which mention is made in the preceding article.

ART. 31. In case of a repetition of the offense the penalties indicated in the two preceding articles may be doubled.

ART. 32. Offenders shall furthermore be condemned to the payment of costs, losses and damages in favor of the owner of the original marks.

ART. 33. Accomplices, accessories and harbourers shall be punished in the proportion established in the Penal Code.

ART. 34. All the marks imitated or falsified except one that shall be attached to the record shall be destroyed in the presence of the Judge and two witnesses; evidence of it shall be left in the records.

ART. 35. The proceeds of the fines of which mention is made in this law shall be applied to the public instruction of the Municipality wherein the offense may have been committed.

ART. 36. Articles, products or merchandise that have falsified or imitated marks, according to the terms of this law, shall be sold at public auction, after the marks have been destroyed, and their proceeds shall be devoted to indemnify those damaged. The balance, if there be such, shall be devoted to the public instruction of the place in which the seizure was made.

ART. 37. The original mark is the one registered. The spurious mark is one not registered, like or similar to the one registered.

There is imitation when there exist between the marks one or more parts essentially similar, or when they may be confounded with each other at first view, and when only upon careful examination it be possible to distinguish one from the other.

SECTION 5

PROCEDURE

ART. 38. Criminal action for violations mentioned in this law, the same as civil action for the reparation of injury caused by the violation, cannot be begun except by the injured person

or by his heirs or his legal representative.

ART. 39. The proof of the *corpus delicti* shall be established by experts, when they determine whether there is imitation or falsification.

ART. 40. The accused, if any of the presumptions established in this law be against them, shall be detained preventively, but they shall be permitted to give jail bond; being rather not arrested or freed from the detention to which they may be subjected, but being obliged to appear whenever they are called, under penalty of being apprehended and arrested if they do not appear, as if they had not given the said bail.

Articles, products or merchandise of the accused on which spurious or false marks may have been used shall be deposited with a person of responsibility until the termination of the proceedings.

ART. 41. The Judges of the Circuit in which is situated the place where the violation was committed, or of the place where the articles, products or merchandise, in respect to which the law was violated, may be found, are competent to try causes to which infractions of this law give occasion.

ART. 42. The procedure for criminal actions is that indicated by Art. 270 of Law 57 of 1887, and for civil, that of the ordinary trial.

ART. 43. Judicial decisions concerning marks, passed into the record as *res adjudicata*, shall be forwarded in a legalized copy to the respective Section of the Ministry for the purposes to which it may have been adjudged.

SECTION 6

NAMES, TITLES, INSIGNIA, ETC.

ART. 44. The name of the merchant or producer, the firm name, the name of joint stock companies, the sign or commercial name of a house or establishment, constitute a property for the purposes of this law.

ART. 45. He that wishes to carry on an industry, business, or line of business already engaged in by another person, with the same name or the same commercial designation, shall adopt a modification that shall cause this name or this designation to be visibly and clearly distinct from that that the pre-existing house or establishment uses, and that avoids all confusion that at a first glance might be produced.

ART. 46. If the party injured by the use of a name does not commence an action within the term of one (1) year from the day on which it was first used by another party, he shall lose his claim to any redress. This action shall be brought by

way of an ordinary trial, and results in indemnification for losses and damages.

Art. 47. Joint stock companies have a right to the name that they bear, the same as another, natural, person, and are subject to the same rules and limitations as regards the right and use of the name.

Art. 48. The right to the exclusive use of a name as a property shall be extinguished together with the commercial house or establishment that bears it, or with the termination of the exploitation of the branch for which it was intended.

Art. 49. The registration of a name is not necessary in order to make use of the rights granted under this law.

Art. 50. The insigne is an emblematic or nominal designation by which the house or establishment that possesses it is distinguished from other commercial houses or establishments.

Paragraph. What is said of the name applies likewise to the insigne, and to titles or signs.

SECTION 7

Unfair Competition

Art. 51. Unfair competition is an act of bad faith that has for an object to create confusion between the articles of two manufacturers or of two merchants or farmers, or that, without creating confusion, tends to discredit a rival establishment.

Art. 52. Acts of unfair competition give cause to those injured to request audience before the common Judges for indemnification for injuries against those that have committed them. This action shall be brought in the ordinary manner.

Paragraph. The Judges in each particular case shall decide, with the intervention of experts, whether the action complained of is or is not one of unfair competition, and shall authoritatively determine the means that may be necessary in order that said competition cease, and that the confusion that it creates between similar manufactures or products of merchants, manufacturers or farmers may be avoided.

SECTION 8

Final Provisions

Art. 53. The Ministry shall send to each Arministrator of Customs a copy of the registrations of foreign marks that may have been registered and an example of each mark.

Art. 54. The registrations of marks made prior to the date of the sanction of this law shall remain in force for ten years, counted from the date of the registration, and shall enjoy

the benefits prescribed by this law and shall be subject to the limitations of the same.

ART. 55. This law shall be translated into English, French, German and Italian, and shall be published in the five languages, in an edition sufficient to be distributed abroad in the public offices, and in the Legations, Consulates, and Agencies of the Republic.

ART. 56. Art. 2 of the Legislative Decree, No. 475, of 1902, and the Executive Decree, No. 217, of 1900, and all the legal and executive provisions that may be contrary to this law are repealed.

COLONY OF SEYCHELLES

ORDINANCE NO. 23 OF JULY 11, 1903, AS AMENDED BY ORDINANCE NO. 10 OF JULY 5, 1919

Definition and application of Ordinance

1. (1) For the purposes of this Ordinance:

(i) The word "person" includes any person, whether a subject of His Majesty or not, and any body corporate or body of the like nature, whether constituted according to the Law of the Seychelles Islands or of any of His Majesty's Dominions, or according to the Law of any foreign country, and also any company, association or society of persons whether the members thereof be subjects of His Majesty and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established or carry on business within the Seychelles Islands or elsewhere, or partly within the Seychelles Islands and partly elsewhere.

(ii) The word "mark" includes any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other descriptions.

(iii) The expression "trade mark" includes any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid lawfully used by any person to denote any article of trade manufacture or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article of any peculiar or particular description made or sold by such person.

The expression also includes any trade mark which, either with or without registration, is protected by law in any British Possession or Foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.

(iv) The expression "trade description" means any description, statement, or other indication, direct or indirect,

(a) as to the number, quantity, measure, gauge, or weight of any goods, or

(b) as to the place or country in which any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark, which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Ordinance.

(v) The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false description within the meaning of this Ordinance.

(vi) The expression "goods" means anything which is the subject of trade, manufacture, or merchandise.

(vii) The expressions "manufacturer, dealer, trader," and "proprietor" include any body of persons corporate or unincorporate.

(viii) The expression "name" includes any abbreviation of a name.

(2) The provisions of this Ordinance respecting the application of a false trade description to goods shall extend to the application to goods of and such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Ordinance respecting the application of a false description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression "false name or initials" means, as applied to any goods, any name or initials of a person which:

(a) are not a trade mark, and

(b) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials, and

(c) are either those of a fictitious person or of some person not *bonâ fide* carrying on business in connection with such goods.

All trade marks to be registered

2. Except as otherwise provided in section 1. (i) (iii), no mark shall have the character of a trade mark in the Seychelles Islands, until it has been duly registered in manner as hereinafter provided.

Application for registration

3. (1) Every person, wishing to register a trade mark which he has a right to use, shall, for that purpose, either by himself or by any party authorised by him on that behalf, make application in writing to the Collector of Customs.

(2) The application shall state what article of trade, manufacture, or merchandise, being the manufacture, workmanship, production, or merchandise of the applicant, such trade mark is intended to denote; and it shall further state, if necessary, to what peculiar or particular description of such article the said trade mark is intended to apply. To the said application shall be joined a facsimile of the trade mark to be registered.

Mode of registration

4. (1) The Collector of Customs shall keep a Register of trade marks duly numbered and initialed by the Registrar of the Court of Seychelles, upon which he shall transcribe every application made to him as aforesaid. He shall mention in the margin of the transcription the date when he received the application, and he shall give a number to each such application. He shall make the same mention and affix the same number upon the trade mark deposited with him, and he shall file and keep the said trade mark in a proper and convenient place in his office.

(2) He shall then return to the person who has applied for the registration of a trade mark the written application made by such person, after endorsing thereon a certificate of registry, in the form of the Schedule annexed to this Ordinance.

(3) Every person who has caused a trade mark to be registered shall give notice thereof in the Government Gazette and one local newspaper, if any, and such notice shall contain a summary description of the trade mark and the date of its registration.

(4) (Repealed by Ordinance No. 10 of 1919.)

Registered trade marks presumed genuine

(5) Every trade mark deposited with the Collector of Customs, and touching which a certificate of registry has been deliv-

ered by the Collector, shall, in every Court in the Seychelles Islands, be presumed to be a genuine trade mark, unless proof to the contrary be adduced, and it shall be, as such, admissible in evidence in every criminal prosecution under this Ordinance as well as in every civil action which the proprietor of the trade mark may be entitled to, at law, in equity, or otherwise.

Registration fee

(6) A fee of ten Rupees shall be paid into the hands of the Collector of Customs, for each certificate of registry delivered by him under the provisions of this Ordinance.

Right of search

7. (1) Upon payment of a fee of one Rupee it shall be lawful for any person to examine the register of trade marks kept by the Collector of Customs, as well as the trade marks filed in his office.

(2) The fees mentioned in this section shall be paid into the Treasury to the credit of General Revenue.

Offences as to trade marks and trade descriptions

8. (1) Every person who:

(a) forges any trade marks; or

(b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or

(c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(d) applies any false trade description to goods; or

(e) disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a mark; or

(f) causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Ordinance, and unless he proves that he acted without intent to defraud be guilty of an offence against this Ordinance.

(2) Every person who sells, or exposes, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, shall, unless he proves—

(a) that having taken all reasonable precautions against committing an offence against this Ordinance, he had at the time of the commission of the alleged offence no reason to suspect

the genuineness of the trade mark, mark, or trade description; and

(b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or thing; or

(c) that otherwise he had acted innocently,

be guilty of an offence against this Ordinance.

(3) Every person guilty of an offence against this Ordinance shall be liable on conviction:

(i) to imprisonment, with or without hard labour, for a term not exeeeding two years, or to fine not exceeding one thousand rupees (Rs. 1,000), or both; and

(ii) to forfeit to His Majesty every chattel, article, instrument, or thing by means of, or in relation to which the offence has been committed.

(4) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of, as the Court thinks fit.

Forging trade mark

9. A person shall be deemed to forge a trade mark who either:

(a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark, so made or falsified, is in this Ordinance referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying marks and descriptions

10. (1) A person shall be deemed to apply a trade mark, or mark, or trade description to goods who

(a) applies it to the goods themselves, or

(b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any

manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark or mark, or trade description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed or affixed to the goods or to any covering, label, reel, or other thing.

(2) A person shall be deemed to apply falsely to goods a trade mark or mark who, without the assent of the proprietor of a trade mark, applies such trade mark or a mark so nearly resembling it as to be calculated to deceive, but, in any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor shall lie on the defendant.

Exemption of certain persons employed in ordinary course of business

11. Where a defendant is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves

(a) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the Seychelles Islands and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b) that he had taken reasonable precautions against committing the offence charged; and

(c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(d) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or trade description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given

due notice to him that he will rely on the above defence.

Application of Ordinance to watches

12. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall prima facie be deemed to be a description of that country within the meaning of this Ordinance, and the provisions of this Ordinance with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Trade mark—how described to pleading

13. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged mark to be a trade mark or forged trade mark.

Rules as to evidence

14. In any prosecution for an offence against this Ordinance:

(1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn or solemnly affirmed and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2) In the case of imported goods, evidence of the port of shipment shall be *primâ facie* evidence of the place or country in which the goods were made or produced.

(i) Provided that in the case of Free Ports in British Possessions or in the case of Ports in British Possessions wherein there is no Officer of Customs, a written statement signed by the Governor or Officer in charge for the time being of such Possessions, and authenticated by the seal of the Colonial Secretary of the Possessions, shall be *primâ facie* evidence that such imported goods are or are not of the manufacture of such Possessions, as the case may be.

(ii) Provided further that whenever the Collector of Customs in Seychelles shall have reason to believe that goods introduced from the above Possessions or Ports fall within the category of goods the importation of which is prohibited by section

19 of this Ordinance, and any Regulations made thereunder, it shall be lawful for him to detain such goods for a reasonable time in order to obtain a written statement as aforesaid.

Punishment of accessories

15. Any person who, being within the Seychelles Islands, procures, counsels, aids, abets, or is accessory to the commission without the Seychelles Islands of any act which, if committed in the Seychelles Islands, would under this Ordinance be an offence, shall be guilty of that offence as a principal, and be liable to be indicted, proceeded against, tried, and convicted in the Seychelles Islands, as if the offence had been there committed.

Search warrant

16. (1) Where upon information of an offence against this Ordinance the *Chief Justice* or a Magistrate has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said *Chief Justice* or Magistrate on or after issuing the summons or warrant is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such *Chief Justice* or Magistrate may issue a warrant under his hand by virtue of which it shall be lawful for any constable, named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search therefor and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before the Competent Court for the purpose of its being determined whether the same are or are not liable to forfeiture under this Ordinance.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Ordinance is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the *Chief Justice* may cause notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or

under any other provision of this Ordinance, may be destroyed or otherwise disposed of, in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and descriptions being first obliterated) award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Costs of defence or prosecution

17. On any prosecution under this Ordinance the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by, and the conduct of, the defendant and prosecutor respectively.

Limitation of prosecution

18. No prosecution for an offence against this Ordinance shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition on importation

19. (1) All imported goods which, if sold, would be liable to forfeiture under this Ordinance, and also all the goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited from being imported into the Seychelles Islands, and, subject to the provisions of this section, shall be included among goods prohibited from being imported as if they were specified in Schedule II of Ordinance No. 7 of 1899 (The Customs Ordinance, 1899).

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Collector of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this section from being imported.

(3) The Governor in Executive Council may from time to time make regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be ful-

filled before such detention or forfeiture, and may by such regulations determine the information, notices, and security to be given; and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name unless accompanied by the name of the country in which such place is situate shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(6) The regulations may provide for the informant reimbursing the Collector of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.

(7) All regulations under this section shall be published in the Government Gazette and shall be laid before the Legislative Council at its next meeting.

Implied warranty on sale of marked goods

20. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Ordinance, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Ordinance as to false descriptions not to apply in certain cases

21. (1) Where, at the passing of this Ordinance, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Ordinance with respect to false trade descriptions shall not apply to such trade description when so applied.

(2) Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually

made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced with a statement that they were made or produced there.

Savings

22. (1) This Ordinance shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Ordinance, be brought against him.

(2) Nothing in this Ordinance shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Ordinance.

(3) Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the Seychelles Islands who *bona fide* acts in obedience to the instruction of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation as to Royal Warrant

23. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of His Majesty or any of the Royal Family, or any Government department, shall be liable, on summary conviction to a fine not exceeding two hundred Rupees (Rs. 200).

Repeal

24. Paragraph VI of Schedule II of Ordinance No. 7 of 1899 is hereby repealed and replaced by the following paragraph, which shall stand and be read in lieu of the aforesaid paragraph:

"VI. Goods referred to in section 19 of 'The Merchandise Marks Ordinance, 1903.' "

Short title

25. This Ordinance may be cited as "The Merchandise Marks Ordinance, 1903."

Coming into force

26. This Ordinance shall come into force on the day of its publication [G. G. No. 34 of 11.7.1903].

CONGO FREE STATE
(BELGIAN CONGO)

DECREE OF APRIL 26, 1888, AND DECREE OF EXECUTION OF APRIL 27, 1888

ARTICLE 1. Every mark used to distinguish the products of an industry or objects of commerce is considered a trade mark or a commercial mark.

The name of a person, as well as the firm name of a commercial or industrial house may, in the distinctive form given it by the interested party, serve as a trade mark.

ART. 2. No one may lay claim to the exclusive use of a mark unless he has lodged facsimiles in triplicate with the electrotype of the mark in the Department of Foreign Affairs.

ART. 3. He only who first made use of a mark may effect the registration of it.

ART. 4. Foreigners as well as natives of the Congo Free State are admitted without distinction to the benefits of the present decree for the products of commercial or industrial establishments conducted either within or without the country.

ART. 5. Our Administrator General of Foreign Affairs is charged with the regulation of all that relates to the present decree, notably to the conditions and formalities of registration, the taxes to be collected, the penalties applicable to counterfeiting and other infractions in matters of marks.

ART. 6. The present decree shall enter into force this day.

Given at Brussels, April 26, 1888.

TRADE MARKS AND COMMERCIAL MARKS

DECREE OF EXECUTION

ARTICLE 1. The registration of trade marks or commercial marks shall be inscribed in a special register, and signed by the registrant or his attorney, as well as by the Administrator General or his delegate. The power of attorney shall be attached to the registration. The latter shall show the day and hour of registration. It shall indicate the kind of industry or of commerce for which the registrant has the intention to use the mark.

A certificate of the registration shall be delivered to the registrant.

Advertisement of registered marks shall be made in the *Official Bulletin.*

ART. 2. There is to be paid a tax of twenty-five francs for each mark registered.

ART. 3. The person registering the mark should furnish: (1) a copy in triplicate of the mark adopted. This copy should be drawn within a border, which should not exceed 8 centimetres in height and 10 centimetres in width.

(2) An electro of the mark. The dimensions of the electrotype, which shall be of metal, must not exceed those of the border mentioned above.

ART. 4. A certificate of the official record shall be delivered to the registrant on payment of the tax; another shall be sent to the Court of the Congo. To each of the certificates shall be affixed one of the facsimiles of the registered mark.

ART. 5. A trade mark may not be assigned except with the establishment, the articles of which, either of manufacture or commerce, it serves to distinguish.

The assignment shall not be of effect in regard to third parties until after the registration of a copy of the instrument of assignment. Mention of the assignment of the mark shall be made on the margin of the record of registration and copies shall be inscribed on the certificate sent to the interested parties and to the Court of the Congo.

Every assignment of a mark by contract between living persons or by will shall be subject to a tax of ten francs.

ART. 6. There shall be punished by a fine of twenty-six to two thousand francs and imprisonment of eight days to six months, or by one of these penalties only:

a) Those who counterfeit a mark and those who fraudulently make use of a counterfeit mark.

b) Those who fraudulently affix to the products of their industry or articles of their commerce a mark belonging to another.

c) Those who knowingly sell, place on sale or in circulation, products bearing a mark counterfeited or fraudulently affixed.

ART. 7. If there exist extenuating circumstances, the penalties of imprisonment and fines may be reduced below the minimum fixed in Art. 6.

ART. 8. Special confiscation may be pronounced in conformity with Article 34 of the decree of January 7, 1886.

ART. 9. A public action may not be prosecuted except on the complaint of an injured person.

ART. 10. The registration of a mark made in contravention of the legal provisions shall be declared null at the demand

of any interested party.

Notice of the judgment pronouncing the nullity of a registration shall, after it shall have acquired the force of law, be sent to the Registrar of the Department of Foreign Affairs, who shall see to it that the judgment is mentioned on the margin of the record of registration.

ART. 11. Those interested may, without cost, obtain information concerning registered marks.

ART. 12. This decree shall enter into force this day.

Brussels, April 27, 1888.

COSTA RICA

LAW OF MAY 22, 1896

ARTICLE 1. There shall be considered as marks of manufacture and of commerce the names of manufacturers and merchants, seals, stamps, engravings, vignettes, ciphers, devices, legends, or any other distinctive signs whatsoever, serving to identify the products of a factory or the objects of an establishment of commerce.

ART. 2. The use of marks of manufacture and of commerce is optional; but in certain cases the police authorities may make it compulsory.

ART. 3. The ownership of a mark of manufacture or of commerce shall be acquired by the registration thereof in the corresponding Register and the filing of two facsimiles of the same mark.

ART. 4. The Executive shall issue the necessary regulations for the formalities of registration and deposit and shall designate the office where such operations must be effected.

ART. 5. The ownership of a mark of manufacture or of commerce shall be acquired only for a term of fifteen years; however, it may be renewed indefinitely every ten years.

ART. 6. For the renewal of a mark of manufacture or of commerce there will be sufficient the declaration by the owner before the proper Bureau, made within thirty days after the expiration of the concession. This term expired, the right acquired shall lapse.

ART. 7. The ownership acquired by the registration and deposit of a mark of manufacture or of commerce shall only confer the right of using the same mark, but in no case that of the exclusive manufacture or sale of the product or article.

ART. 8. There shall be responsible jointly and severally, for frauds committed against the ownership of marks of manufacture or of commerce, save proof of their innocence, the person for whose account the fraud has been committed, the authors of the falsification, and the importers of or dealers in the falsi fied article or product.

ART. 9. Infringement committed against marks of manufacture or of commerce shall be punished in conformity with Art. 496, paragraph 3, of the Penal Code.

ART. 10. Marks of manufacture or of commerce shall not be granted for the manufacture or sale of illicit articles or products.

ART. 11. There is prohibited in marks of manufacture or of commerce the use of immoral designs, prints, or vignettes.

ART. 12. The coat of arms of the Republic and the national flag shall not be allowed to be used in marks of manufacture or of commerce.

CUBA

ROYAL DECREE, AUGUST 21, 1884, AS AMENDED BY CIVIL ORDERS NOS. 511 OF DECEMBER 18, 1900; 512 OF DECEMBER 19, 1900; 18 OF JANUARY 17, 1901; AND 105 OF APRIL 19, 1901.

TITLE I

General Provisions

Article 1. There shall be considered as marks of manufacture, of commerce, of agriculture and of any other industry, the names of manufacturers, merchants, agrarians, industrials of all classes, or companies formed by the same, the denominations, emblems, coats or arms, engravings, vignettes, marks, stamps, seals, reliefs, letters, ciphers, envelopes, wrappings or signs, whatever be their form, that serve to the end that the manufacturer, merchant or agrarian, industrial of any class, or company formed by them, may distinguish his products or goods, with the object of the public recognizing and distinguishing them without confusing them with others.

Art. 2. There shall be comprised in the benefits of this Decree designs destined for the printing of textiles and papers; those of this class painted for decoration, models for jewelry, cabinet-making, carving, and in general all industrial designs and models.

Art. 3. Signs or other exterior or material designations by means of which a merchant distinguishes his establishment from others of the same kind shall not be subject to this disposition.

Art. 4. Any manufacturer, merchant, agrarian or industrial of other class, who individually or collectively desires to use any mark to distinguish the products of a factory, the objects of his commerce, prime raw materials or any other whatever, or the live stock industry, and those also that desire to preserve the ownership of industrial designs and models, shall have to petition certificate of ownership in accordance with the prescriptions of this Decree.

He who is lacking of said certificate may not use any mark or distinctive for the products of his industry, nor prevent others from employing his impressions, industrial designs or models.

Art. 5. The manufacturer, merchant, agrarian, or industrial of other character, may adopt for the products of his

factory, commerce or agricultural industry the distinctive that he may deem expedient, excepting those that are mentioned hereafter:

1. The arms and standard of the Nation and Cuban decorations, unless such be competently authorized to this effect;

2. The coats of arms, insignia, heraldic designs or devices of foreign States or Nations, without the express consent of the respective Governments;

3. The denominations generally used in commerce for determining the class of merchandise;

4. Figures that offend public morals and caricatures that tend to ridicule ideas, persons or objects worthy of consideration;

5. Distinctives whereof others may have obtained, with priority, certificate of registration for a like class of products, merchandise or objects, when said certificate has not yet expired in accordance with this Decree;

6. Distinctives that through their semblance or similarity to others already granted may induce to confusion or error;

7. Those relative to any religious cult, whenever through the ensemble of the mark it be deemed that it is intended to ridicule, revile, or disesteem it, or which involuntarily may conduce to the same result;

8. The portraits of persons living, unless obtaining from them adequate permission, and those of persons that have died, when their relatives, within the fourth civil degree, shall make opposition to the concession;

ART. 6. Marks of manufacture shall be obligatory solely for objects of gold or silver, chemical and pharmaceutical products, and others that special regulations shall determine.

TITLE II

THE RIGHT OF OWNERSHIP IN MARKS, DESIGNS AND INDUSTRIAL MODELS

ART. 7. No one may claim the ownership of marks, designs or industrial models unless he shall have the corresponding certificate and shall evidence having complied with the dispositions that this Decree determines.

ART. 8. When two or more persons shall solicit the same mark, the right of ownership shall correspond to him who first shall have presented his application, in accordance with the day and hour on which it appears registered.

ART. 9. No one may solicit or acquire more than one mark for the same industry or the same class of products.

ART. 10. The certificate of ownership of mark, design or

industrial model, may only be obtained by Cuban or foreign manufacturers, merchants, agrarians and industrials of other class established in Cuba, or companies formed by any of these, for the ends of the present Decree.

ART. 11. Foreigners that reside without Cuba shall have the rights that are granted to them through agreements celebrated with their respective Nations.

There being no Treaties, there shall be observed strictly the right of reciprocity.

TITLE III

LEGAL EFFECTS OF THE CERTIFICATE OF OWNERSHIP OF MARKS, DESIGNS AND INDUSTRIAL MODELS

ART. 12. He that, in accordance with this disposition, obtains a certificate of ownership of marks, designs or industrial models, is authorized:

1. To criminally prosecute before the Tribunals of Justice, subject to the dispositions of the Penal Code and to those of this Decree, those that shall use marks, designs or industrial models falsified or imitated in such way that they may be confused with the genuine; those that use marks with indications possible of deceiving the purchaser regarding the nature of the product; those that without competent authorization shall use legitimate marks, designs or industrial models; and, finally, those that without falsifying a mark shall detach or separate it from some products in order to avail themselves thereof by placing it on others;

Those that shall buy or sell containers with marks stamped permanently and which are registered in favor of another person, except when it be done by this latter or his authorized agent, or shall utilize them by placing therein for its sale merchandise like or similar to that for which said containers are intended by the owner of the mark. In such cases the containers shall be sequestered, which same the defrauder shall lose in favor of the party defrauded;

2. To petition civilly before the Tribunals of Justice indemnification for all damages and injuries that may have been occasioned by those that falsify a mark, design or industrial model conceded, by those that use them falsified or imitated and by the others to whom the preceding paragraph refers;

3. To demand civilly like indemnification from the merchant that suppresses the mark or distinctive sign of the producer without his express consent, although he may not prevent him from adding separately his own mark or the peculiar sign of his commerce; and

4. To lodge opposition to there being conceded certification of ownership of mark, design or industrial model, when that which is solicited is like that of his ownership or shall have, with respect to it, similarity, semblance or indications sufficient to deceive the purchaser.*

ART. 13. Every concession of certificate of mark, design or industrial model shall be understood as made without prejudice to third parties.

ART. 14. Foreign products with Cuban marks shall be prohibited and shall be confiscated on their entry in the Custom Houses of Cuba, whether they be marks entirely new, falsification of those recognized to the producers of the country, or simply an imitation of the same; there remaining always excepted the right that corresponds to the owner of the recognized mark to prosecute civilly and criminally the falsifier or imitator of the same.

ART. 15. The ownership of certificates of marks, designs or industrial models, shall be considered as all other chattels as regards assignment, prescription and other legal effects.

Criminal actions shall expire by limitation, subject to what is established in the Penal Code.

ART. 16. For the greater guarantee of assignees of marks, designs or industrial models, there shall be given account to the Secretariat of Agriculture, Commerce and Labor, through intermediary of the Governors of the respective Provinces, of each of the assignments or successions, by presenting proof of the instrument of assignment or sale, or of the testamentary clause, within the term of three months, counted from the date on which the right has been acquired, in order that record may be made and that it be filed in said Secretariat.

TITLE IV

EXPIRATION OF THE RIGHT OF OWNERSHIP OF MARKS, DESIGNS OR INDUSTRIAL MODELS

ART. 17. Certificates of ownership shall expire in fifteen years, counted from the date of their concession, but they may be renewed by the same means prescribed for acquiring them.

ART. 18. Certificates shall expire, in addition:

1. Through the disappearance of the *persona juridica* to whom its use pertains;

2. Through executory sentence of the competent Tribunal, such only with relation to the person defeated in the action;

3. When the party interested solicits it;

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* For supplemental enactment covering oppositions, see Decree No. 1238 of September 9, 1915, with amendments.

4. When he that shall obtain the ownership of a mark does not make use thereof within Cuban territory within the term of two years counting from the date of the concession;

5. When the proprietor of a mark, after having commenced to make use thereof, shall cease to affix it to the products of his industry for one year and one day, unless it shall be justified as of *force majeure;*

6. When there be not fulfilled the other requirements established in this Decree.

ART. 19. Every case of petition for certificate of ownership shall be without effect if, within the thirty days following that of its date, there shall not be fulfilled for reasons imputable to the applicant the formalities prescribed by this Royal Decree.

ART. 20. Declaration of expiration in the cases indicated in Art. 18, Nos. 1, 3, 4 and 6, shall correspond to the Secretary of Agriculture, Commerce and Labor, and against his resolution there shall be lodged appeal to the President of the Republic, within the term* that Art. 57 of the Organic Law of the Executive Power determines, and against the resolution of the President contentious-administrative proceedings in appeal may be lodged† before the *Sala de lo Civil y de lo Contencioso administrativo de la Audiencia de la Habana.*

When use has not been made within one year and one day, there shall correspond to the Tribunals the declaration of expiration, on petition of the interested party.

Persons or collectivities that by virtue of this Decree shall have right to the use of marks, designs or industrial models, may petition at any time the nullification of those already conceded, by presenting to this effect satisfactory reasons. When, as a result of these, there arises a question of possession or ownership, the Administration shall stay the executory proceedings and shall direct the parties to the ordinary Tribunals to the end that they may avail themselves of the right in accordance with which they believe themselves justified.

TITLE V

FORMALITIES FOR THE ISSUE OF CERTIFICATES

ART. 21. The right to the ownership of marks, designs or industrial models, that this disposition recognizes shall be acquired by certificates and the fulfillment of the other provisions that the same determines.

ART. 22. In order that manufacturers, industrials, mer-

* Ten days.
† Ninety days.

chants or agrarians may have due protection in the enjoyment of their marks, distinctive signs of manufacture, designs or industrial models, they shall previously make application to the Secretariat of Agriculture, Commerce and Labor, for the corresponding certificate of ownership, if the applicant shall have his domicile or establishment in the Province of Habana; or, those that do not have such in the said Province, if it should seem proper to them, through the intermediary of the Governors of their respective Provinces. In the application there shall be described in detail with all precision the class of mark adopted, the form, letters or signs, that its subject matter contains, the article for which the mark or design is intended, the name of its owner, his domicile or place at which his establishment is found, there being included, in addition, six facsimiles of the design of the mark that it is desired to register, three of them with their description appended, attested with the signature of the applicant, the license that evidences his quality of industrial or merchant and the last receipt of contribution. If it shall be a question of a mark for live stock, it shall be sufficient if the petitioner with his application evidences that he is an owner of live stock, through certificate issued by those charged with the registration of cattle.

ART. 23. When manufacturers shall desire to maintain secrecy as regards the method employed in the stamping of the mark or industrial design, they shall so state in the application, describing it in a closed and sealed envelope, which shall be opened only in case of litigation.

ART. 24. The officer charged with the General Register of the Secretariat of Agriculture, Commerce and Labor, or, in his case, the Secretary of the Provincial Governor, in the act of receiving the application papers, to which Art. 22 makes reference, shall impress, by means of a stamp, at the foot of each one of the facsimiles presented, on which appears the description of the mark, model or design, or shall endorse in writing the following: "Presented before me, ...day..... year..... hour..... minute, by Mr....., who proves that he is recorded as.....according to license No..... issued by the local government of..... on..... and to be paid up as regards contributions according to receipt No....., dated....., whose application is filed under No.....", signing this endorsement and stamping the official seal. Said note expressive of the date, hour and minute of the presentation, shall serve for determining the priority of the applicant in case of identical or like petitions.

There shall not be admitted nor shall course be given to any application in which the requirements above expressed are not fulfilled.

ART. 25. For each certificate of ownership that shall be petitioned, there shall be opened in the Secretariat of Agriculture, Commerce and Labor, a file in which there shall appear the application and one of the facsimiles of the design of the mark on which there shall have been entered the annotation of presentation.

ART. 26. In the case of there being presented in the Provincial Government the application whereof Art. 22 treats, one of the facsimiles of the mark on which appears the note of presentation shall be delivered in the same act to the interested party, along with the license and the receipt of contribution that he has exhibited; another shall be forwarded to the Secretariat of Agriculture, Commerce and Labor with the other documents presented and the third shall be filed and retained in the Office in charge of the Secretary of Provincial Government, there being given to it a number and there being included with it all the corresponding papers in chronological order of presentation, care being taken to make an alphabetical index of the names of the applicants that each one of the papers contains.

In the case of the application being presented directly to the Secretariat of Agriculture, Commerce and Labor, the procedure of which the preceding paragraph treats shall be in charge of the same, and within three days there shall be forwarded one of the facsimiles of the design of the mark, with the corresponding annotation, to the respective Provincial Government, for the ends already indicated, and there shall be made a general index of all applications that are presented in the same or through intermediary of the Provincial Governments.

The files of the facsimiles deposited with the Provincial Governments shall take the place of—in applications that are presented in the future—the Special Book of Registry which, by the present Decree, shall no longer be opened by the said Provincial Governments, but they shall be preserved in their archives.

ART. 27. On report of the Economic Society, which in its turn shall hear the Municipal Authorities of the Capital as regards tobaccos, cigars, and matches, as to whether the mark, design or industrial model, has already been used on manufactures of the same class, or whether it is the property of a third party, the manufacturer shall obtain a certificate or title that evidences his having presented and justified his mark, design or industrial model, there being expressed therein with all pre-

cision its form and other circumstances.

ART. 28. The applicant shall pay, as fees for the issue of the title of ownership, twelve pesos, fifty centavos, in money of legal tender. Said pavment shall be made in the corresponding Office of the Treasury, within the term of thirty days, counted from the date on which there shall be communicated to the interested party the concession of the mark, marks, design or industrial model, under penalty of caducity; presenting to the Secretariat of Agriculture, Commerce and Labor the document verifying it, in order that the same may be able to issue to him and will issue to him the said title, of which note shall be taken in the Register opened for this purpose in the Section of Intellectual Property, Marks and Patents, of said Secretariat.

ART. 29. The Secretariat of Agriculture, Commerce and Labor shall forward to the Economic Society one facsimile of each mark, design or industrial model, of which certificate of ownership is issued, with all the antecedents necessary to the ends determined in Art. 38; and shall publish in the *Gaceta Oficial,* quarterly, the certificates of ownership issued during this period, and at the end of the year the general state of all those granted during its course. In case of litigation, before the competent Judge, there shall be exhibited the facsimile issued.

(*) . . . . . .

ART. 36. In the issue of titles of ownership of marks it shall be borne in mind:

1. That, to manufacturers that apply for a certificate of the same and identical mark, even though for different goods, there shall not be issued more than a single certificate therefor, there being explained therein the diverse applications that they make of the mark;

2. That, to manufacturers, merchants, agrarians and industrials that, for the same thing, petition, for the purpose of distinguishing its class and quality, or for other reason, the use of different marks, although similar, there shall be issued a certificate therefor for each variation that the mark may have, there being expressed the special use of each one and there being required therefor the payment of the corresponding fees ($12.50, legal tender), as often as certificates are to be issued therefor;

3. That, to manufacturers that petition the use of marks for themselves or for a son or associate, there shall be issued as many certificates as there are marks; but by expressing the person in favor of whom it is issued, so that, in case of separat-

* Articles 30 to 35 have been inapplicable since Cuban independence.

ing from his father or his associate, it be known that the mark belongs to him, he having to pay, as the preceding paragraph provides, the fees established for each one of the certificates that are issued.

TITLE VI

Publication of Marks, Designs and Industrial Models; Their Descriptions, Designs or Facsimiles

Art. 37. The Secretariat of Agriculture, Commerce and Labor shall arrange, in the second fortnight of the months of January, April, July, and October, for the immediate publication in the *Gaceta Oficial* of a statement of all the titles of ownership of marks, designs or industrial models granted during the preceding quarter, there being expressed clearly the subject matter to which they refer.

The Governors of the Provinces shall order, as soon as the said particulars appear in the *Gaceta Oficial,* that they be reproduced in the *Boletines Oficiales* or periodicals of the locality, and, in default of both, by means of announcements posted in customary places.

Art. 38. The descriptions and designs of marks, and designs and industrial models, shall be at the disposition of the public at the Secretariat of the Economic Society during the hours that the President of the same shall fix.

TITLE VII

Penal Dispositions

Art. 39. There shall be punished by the Government by fine of from 15 to 45 pesos, without prejudice to civil and criminal action that may follow:

1. Those that shall use a mark, marks, designs or industrial models, without having obtained the corresponding certificate of ownership;

2. Those that, being legitimate owners of a mark, shall apply it to products different from those for which it was conceded;

3. Those that shall make use of the marks of the producer on goods without his express consent;

4. . . . . .

5. Those that shall make use of a transferred mark without having taken diligence to justify the transfer within the term of ninety days.

In default of payment the infractor shall be subject to a substituent personal responsibility at the rate of one day for each peso of fine.

Art. 40. There shall be punished with a fine of from 45

to 135 pesos, and, in default of payment, with the personal responsibility that the final paragraph of the preceding article establishes:

1. Repeaters of the offense, there being understood as such those that shall have been punished for the same offense during the five preceding years;

2. Those that shall use a mark prohibited by law.

ART. 41. There shall be considered as comprised within the prescriptions of Art. 288 of the Penal Code those that shall use marks imitated in such a way that the consumer may fall into mistake or error, confusing them with the true or legitimate ones.

ART. 42. Those that shall vary, without due authorization, in whole or in part, the mark, design or industrial model of their use, shall lose the right that they have thereto.

ART. 43. Actions for denouncing infractions of this Decree shall be public.

TITLE VIII

COMPETENCE IN TRADE MARK MATTERS

ART. 44. The service referring to ownership of marks, designs and industrial models, shall be in charge of the Secretariat of Agriculture, Commerce and Labor, assisted by the Governments of the Provinces.

The said Secretariat of Agriculture, Commerce and Labor is authorized:

1. To decide cases regarding the concession of marks, designs or industrial models and matters thereto appertaining, unless they relate to the ownership, or to some of the actions that the Penal Code defines as crimes and misdemeanors;

2. To issue titles of ownership of marks, designs or industrial models;

3. To oversee the service and the registration of these;

4. To declare cases in which there shall be expedient the correction that Arts. 39 and 40 indicate, giving notice of these and officially communicating to the Governor of the Province concerned that he shall carry them out, remitting within the term of fifteen days the amount of the fines.

Against the resolution that the Secretariat of Agriculture, Commerce and Labor shall issue, recourse in appeal may be had to the President of the Republic, within the term that Art. 57 of the Organic Law of the Executive Power determines; and against the resolution of the President, contentious-administrative appeal may be had before the Civil Chamber and that of the Contentious-Administrative of the Audience of Habana, in

the form and under the conditions that the law effective in the matter provides.

ART. 45. Questions that shall arise regarding the ownership and possession of marks shall be of the competence of the ordinary Tribunals, without there being incumbent upon the Administration, in case of litigation, anything other than to direct that there be shown the design of the mark, and subsequently to acknowledge the right of ownership of the mark in him that shall show in legal form to have obtained it through decision of the Tribunals, without it being possible to declare the caducity of the mark during the litigation.

ART. 50. The Government shall publish the regulations necessary for the execution of this decree.

ART. 51. All prior dispositions that are opposed to the execution of this Royal Decree shall be derogated.

DECREE NO. 1238 OF SEPTEMBER 9, 1915, AS MODIFIED BY DECREE NO. 225 OF FEBRUARY 14, 1917, AND DECREE NO. 312 OF FEBRUARY 28, 1917

Whereas: According to the provisions in paragraph 1 of Art. 68 of the Constitution of the Republic, it is incumbent on the Executive to decree the provisions, orders, and regulations necessary for the better execution of what is established in the laws;

Whereas: By virtue of the provision in paragraph 4 of Art. 12 of the Royal Decree of August 21, 1884, which is the Organic Law concerning the ownership of trade marks, whoever in accordance with its provisions obtains the corresponding certificate of ownership of trade marks, industrial designs or models, has the power to oppose the concession of certificates of those classes, when that which is applied for is like that of his ownership, or has with it the likeness, similarity, or features sufficient to deceive the buyer;

Whereas: The exercise of this right of opposition is not regulated in said Royal Decree of August 21, 1884, nor in any of our qualifying laws referring to administrative procedures;

Whereas: This deficiency is easily corrected, by having applications for trade marks, industrial designs or models published, and fixing the terms within which oppositions against the same may be brought and prosecuted.

At the instance of the Secretary of Justice,

I RESOLVE:

1. After the publication of this Decree, whenever there be

solicited in the Bureau of the Secretary of Agriculture, Commerce, and Labor, by means of the opportune formalities, the concession of a certificate of ownership of trade marks, industrial designs or models, there shall forthwith be prepared by the Bureau of Trade Marks and Patents an advertisement giving the name and surname of the applicant, the gist, in extract, of the application for trade mark, industrial design or model, and date of the application, for the purpose of proceeding to its publication for a period of three days in the *Gaceta Oficial de la República,* in which it shall be stated that the conditions of the mark are to be published with greater fullness in the *Boletín* of the Bureau of the Secretary of Agriculture, Commerce, and Labor, and in consequence thereof the contents of said advertisement shall be amplified in the form that may be deemed expedient by the Bureau of the Secretary of Agriculture, Commerce, and Labor in the *Boletín Oficial* of the same Department.

2. That publication shall have a preferential character, and, counting from the date of its insertion in the *Boletín Oficial*, there shall be granted a term of sixty days, to the end that the oppositions that are established in paragraph 4 of Art. 12 of the Royal Decree of August 21, 1884, may be made, or any other that may be in order; in any case the cost of the insertion of the advertisement in the *Gaceta Oficial* shall be defrayed by him that makes the application for the issue of the trade mark certificate, for which purpose the official announcement shall be delivered to the party interested.

3. An opposition being presented in due time and form, the Bureau of the Secretary, considering it as established, shall hear, if it deems it necessary, the opposer, and within a term that it shall prudentially indicate and as early as possible, it shall proceed with those investigations that it esteems pertinent, now from among those proposed by certain of the parties, again from those that in its judgment are expedient, and shall admit the documents that may be presented to it. Said term and the extensions that the Bureau of the Secretary may have deemed proper to grant having expired, and the other legal steps of the case being carried through, the resolution that corresponds shall be dictated, which likewise shall be published in the *Gaceta Oficial.*

4. In every proceeding there shall be produced proof of the fulfillment of what is established by Art. 1, by means of the minutes authorized by the Chief of the respective Bureau, in which shall be stated the number and date of the *Gaceta* and of the *Boletín Oficial* in which the advertisement of the applica-

tion and the final resolution of the case were published.

5. This Decree shall become effective from the date of its publication in the *Gaceta Oficial.**

CIVIL ORDER NO. 160

HEADQUARTERS, DEPARTMENT OF CUBA

Habana, June 13, 1901.

Under instructions from the Secretary of War, the Military Governor of Cuba directs the publication of the following order:

1. The rights of property in patents, copyrights, and trade marks, duly acquired in Cuba, the Isle of Pines, and the Island of Guam, pursuant to the provisions of Spanish law and existing in one or all of said islands on April 11, 1899, shall continue unimpaired for the period for which they were granted, and the owner or owners thereof shall be protected and their rights therein maintained: *Provided,* That the original or a duly certified copy of the patent, or of the certificate of registration of the trade mark or copyright, is filed in the office of the Governor of the island wherein such protection is desired.

The certificates of registration of trade marks issued prior to April 11, 1899, by a Spanish provincial registry or the National Registry of Spain at Madrid, or the International Registry at the Bureau of the Union for the Protection of Industrial Property, at Berne, Switzerland, shall receive such recognition and credence as were accorded them in said islands under Spanish sovereignitv; and an original certificate or duly certified copy thereof shall be received and filed in the office of the Governor of the island for all purposes connected with this order without further or other certification.

2. The rights of property in patents, including design patents granted by the United States, and in trade marks, prints, and labels duly registered in the United States Patent Office, and in copyrights duly registered in the office of the Librarian of Congress, shall be maintained and protected by the government of civil affairs in the islands above named: *Provided,* That a duly certified copy of the patent, or of the certificate of registration of the copyright, trade mark, print, or label, is filed in the office of the Governor of the island wherein such protection is desired.

3. An infringement of the rights protected by compliance with the provisions of this order shall subject the person, firm, association, or corporation guilty of such infringement to the

* Published in *Gaceta Oficial,* February 16, 1917.

civil and penal liabilities created and imposed by such of the laws of Spain relating to said matters as remain in force in said islands.

4. Such provisions of existing orders as are in conflict with this order are hereby revoked.

[Signed] Edward Carpenter,
First Lieutenant, Artillery Corps, Aid-de-Camp.

Secretariat of Agriculture, Commerce and Labor
Habana, June 21, 1902.

. . . . . .

The military government of the United States in this island having ceased, by virtue whereof and in accordance with the express text thereof, circulars Nos. 12 and 21, dated, respectively, April 11 and June 1, 1899, issued by the Division of Customs and Insular Affairs of the War Department at Washington, concerning the registration of American trade marks . . . have become without value or effect, inasmuch as said circulars were issued for the territories subject to military forces of the United States, I have resolved that . . . marks of all kinds, prints, labels, and tickets, duly registered in the Patent Office of the United States, whose filing in this island may be requested for their protection in future, shall from the present date be recorded in the bureau under my charge in proper case, upon complying with the procedure followed for registration from other countries, and the payment of . . . $12.50 currency for marks, prints, etc.—that is to say, the same fees which are paid by all others, foreign or national, in place of $1 currency, which is provided for in said circular No. 21, regarding the American.

CURACAO

ROYAL ORDINANCE (REGULATION FOR INDUSTRIAL PROPERTY IN THE COLONIES, 1912) OF AUG. 29, 1912

ARTICLE 1. (1) The Department of Agriculture, Industry and Commerce in the Dutch Indies is charged, as Auxiliary Bureau of the Bureau of Industrial Property, created by Art. 1 of the Trade Mark Law,* with the supervision of industrial property in the Dutch Indies; in Surinam and in Curação the office of the Procurer-General of the Court of Justice of these colonies is charged with this service.

(2) The Auxiliary Bureau is at the same time conservator of marks deposited, and is charged with the publication of the marks of manufacture and of commerce in the colony in which it is established.

(3) The Auxiliary Bureau shall furnish to the Bureau of The Hague all the data concerning industrial property that this latter shall require of it.

ART. 2. (1) In the Dutch Indies, in Surinam, and in Curação, the right to the exclusive use of a mark intended to distinguish the products of the industry or trade of one person from those of others belongs to him that first in the Kingdom in Europe, in the Dutch Indies, in Surinam, or Curação, shall have made use of this mark for the purpose indicated; but this solely in whatever concerns the class of goods for which the mark shall have been used, and provided that the last use has not been made more than three years before.

(2) Save proof to the contrary, and subject to the provisions of the following paragraph, he that first shall have satisfied the provisions of Art. 4 shall be considered as having been the first to make use of the mark deposited.

(3) He that shall have deposited a mark in the Auxiliary Bureau of Industrial Property within the term of four months after he shall have effected the regular deposit, agreeable to Art. 6 of the Convention of Paris of March 20, 1883, for the protection of industrial property (*Nederlandsch Staatsblad,* 1884, No. 189; *Indisch Staatsblad,* 1888, No. 188; *Gouvernementsblad van Suriname,* 1890, No. 8; and *Publicatieblad van Curação,* 1890, No. 3), in one of the countries that have ratified the said Convention, shall be considered as having made use of the mark from the commencement of this term in the colony in which the

* For translation of the Dutch trade mark law referred to see The Netherlands.

Auxiliary Bureau is located.

(4) He that, within the six months following the opening of an international exposition, official or officially recognized, within the territory of one of the countries adherent to the said International Convention of Paris, shall have deposited with the Auxiliary Bureau of Industrial Property a mark under which articles of his trade or of his industry have been exhibited at this exposition, in order to be registered according to Art. 4 for the same class of goods, shall be considered as having made use of this mark within the colony in which the Auxiliary Bureau is established, from the day on which it has figured in the exposition as a distinctive sign of his products of the same class. As proof of the day on which the mark has thus figured in the exposition, the Auxiliary Bureau of Industrial Property may require the production of a certified declaration from the administration of the exposition or from any qualified person or authority approved by it.

ART. 3. The registration of one mark in the name of several owners is authorized only if they all jointly have a share in the industry or commercial establishment whose products the mark is destined to distinguish.

The Auxiliary Bureau of Industrial Property may require, as proof of this fact, the deposit of a certified extract of the instrument establishing the joint right whereof there is question.

ART. 4. (1) In order to obtain the registration of a mark, the party interested shall deposit with the Auxiliary Bureau of Industrial Property that is found within the colony in which it is desired to register his mark a cut (*cliché*), corresponding to the mark, having a length and a width of at least 1.5, and at most 10 centimetres, and a thickness of 2.4 centimetres, in addition to two signed copies of a distinct reproduction of his mark and an exact description agreeing with this latter. This description should mention, in addition, the class of goods for which the mark is intended, as well as the full name and the domicile of the depositor. If the description designates the color as a distinctive element of the mark, the depositor shall place at the disposition of the Auxiliary Bureau the number of reproductions in color of the mark that shall be determined by this latter.

(2) The deposit may also be made by a person authorized in writing.

(3) The mark shall not contain words or representations contrary to good morals or by which the use of the mark might be harmful to public order. It shall not contain the arms or seal, even slightly modified, of a public law department.

(4) On the deposit, there shall be payable for each mark a

fee of ten florins which shall in no case be refunded.

ART. 5. (1) Within the eight days that follow that of its filing, the mark, deposited according to the preceding article, shall be, subject to the provisions of Art. 9, registered by the Auxiliary Bureau of Industrial Property in the public register provided for this purpose, whose model agrees with that established, according to Art. 5 of the trade mark law, by the Minister charged with the execution of the said law.

(2) The two facsimiles deposited of the reproduction and of the description shall be certified, with the addition of the date and the number under which the inscription in the register shall have been effected.

(3) One of these facsimiles shall be returned to the depositor within the three days that follow.

(4) In the case provided in the second paragraph of Art. 4 the power shall be attached to the other facsimile.

ART. 6. (1) The Auxiliary Bureau of Industrial Property shall publish in the Dutch Indies in the next following number of the journal, the *Javasche Courant,* monthly; in Surinam and in Curaçao in the next following number of the journal appearing monthly, wherein official notices are published, the descriptions, mentioned in Art. 4, of the marks registered since the last publication, each with the reproduction of the corresponding *cliché,* by indicating the class of goods for which these marks are intended, as well as the full name and the domicile of the depositors.

(2) These publications shall be made in the special supplements of the *Courant* or of the journal, which may be obtained separately. After this, the *cliché* shall be returned to the depositor on his request.

ART. 7. (1) Residents of the Dutch Indies, of Surinam or of Curaçao, as well as non-residents that have there a serious commercial or industrial establishment, effectively serving in the exercise of industry or commerce, who desire to secure for themselves in other countries adherent to the Arrangement approved by the law of Dec. 12, 1892, (*Nederlandsch Staatsblad,* No. 270; *Indisch Staatsblad,* 1893, No. 99; *Gouvernementsblad van Suriname,* 1893, No. 8, and *Publicatieblad van Curaçao,* 1893, No. 2) and concluded at Madrid, April 14, 1891, the protection of the mark deposited by them in conformity with Art. 4, for the same class of goods, shall forward to the Auxiliary Bureau of Industrial Property in the colony, in which they are domiciled or possess a commercial or industrial establishment, four additional facsimiles, of which one shall be signed, of a distinct reproduction of the mark, a description of the kind of

goods for which the mark is intended, drawn up in French and signed by them, and a *cliché* agreeing with the provisions of the preceding article. If the color of the mark constitutes a distinctive element of this last, the depositor shall make mention thereof in a detailed description of the mark, signed by him, which he shall include with the deposit; and he shall place at the disposal of the Auxiliary Bureau of Industrial Property the number of facsimiles in color that this latter shall have determined.

(2) The second paragraph of Art. 4 shall be applicable thereto.

(3) On the deposit, there shall be payable, for one mark the sum of sixty florins, and for each of the following marks, filed at the same time as the first by the same owner or in his name, the sum of thirty florins. The sums thus paid shall in no case be refunded.

(4) If the mark deposited by virtue of Art. 4 has not been registered in accordance with Art. 5, the Auxiliary Bureau of Industrial Property shall notify the depositor that the application for registration with the International Bureau at Berne cannot take place for the time being.

(5) If the mark has been registered according to Art. 5, or as soon as it shall be, the Auxiliary Bureau of Industrial Property shall forward, including therewith the sum of sixty florins for the first mark and thirty florins for each of the following marks deposited at the same time as the first by the same owner or in his name, the three unsigned facsimiles of the reproduction mentioned in the foregoing first paragraph, with the description there provided of the class of goods for which the mark is intended, drawn up in French and signed by the depositor, and, in the case provided in the last phrase of the first paragraph of the present article, the number of impressions of the mark in color fixed by the Bureau at The Hague, to this latter Bureau, which shall proceed without delay with the application for registration at the International Bureau at Berne.

(6) The Auxiliary Bureau shall keep the signed facsimile of the reproduction, which it shall certify as correct.

(7) The Bureau of The Hague shall without delay notify the Auxiliary Bureau of all the International Bureau has communicated to it on the subject of the mark, and the Auxiliary Bureau shall advise the depositor thereof in so far as it is deemed that these communications may interest him.

(8) The Bureau of The Hague shall return, in addition, to the Auxiliary Bureau, the copy of the application for registration that shall have been returned to it by the International

Bureau at Berne.

ART. 8. (1) When the Bureau of The Hague shall have received from the International Bureau at Berne, in conformity with Art. 3 of the Arrangement of Madrid modified by the Additional Act signed at Brussels Dec. 14, 1900, and approved by the Law of June 7, 1902 (*Nederlandsch Staatsblad,* No. 85; *Indisch Stattsblad,* No. 377; *Gouvernementsblad van Suriname,* No. 22, and *Publicatieblad van Curação,* No. 37), a notification concerning the international registration of a deposited mark, in the tenor of Art. 7 of the present decree, at an Auxiliary Bureau, or of a foreign mark, it shall transmit without delay to the interested Auxiliary Bureau a certified copy of this notification, and this latter shall record the mark, subject to the provisions of Art. 9, and within eight days after the receipt of the notification, in the public register for this purpose, whose model is identical with that provided, according to Art. 8 of the trade mark law, by the Minister charged with the execution of the said law.

(2) The copy of the notification received shall be certified, with the addition of the date and of the number under which the inscription in the register shall have been effected.

(3) If the internationally registered mark has been deposited according to Art. 7 in the Auxiliary Bureau of Industrial Property, this latter shall as soon as possible give notice to the depositor concerning the international registration, and shall deliver to him a dated certificate concerning the registration mentioned in the first paragraph of the present article.

(4) The supplement of the journal of the International Bureau at Berne in which are published the internationally registered marks may be obtained from the Auxiliary Bureau, to which the Bureau of The Hague shall remit, for this purpose, the requisite number of copies.

(5) The placing of this journal at the disposition of the public shall be, each time, the subject of a communication in the *Courant,* or in the journals mentioned in Art. 6.

ART. 9. (1) If the mark, deposited in accordance with Art. 4, or the foreign mark, mentioned in Art. 8, agrees absolutely or in its essential elements with that registered in the name of another, or deposited previously by another for the same class of goods, or if it is contrary to the provisions of the next to the last paragraph of Art. 4, the Auxiliary Bureau of Industrial Property may refuse its registration; it shall give notice of this refusal to the depositor in writing, with indication of the reasons, within the eight days that follow the deposit of the mark, or as soon as possible after having received the notification

addressed, according to the terms of Art. 8, to the Bureau at The Hague, which will communicate the refusal to the International Bureau at Berne.

(2) The depositor, with whom Art. 4 is concerned, or the one of the mark mentioned in Art. 8, may address—in the Dutch Indies to the *Raad van Justitie* at Batavia, in Surinam or in Curação to the *Hof van Justitie*—a petition signed by himself or by his attorney, to the end of having the registration ordered. This petition shall be presented by the depositor whereof Art. 4 treats within the three months that follow the hereinbefore mentioned notice, and, by the depositor of the mark mentioned in Art. 8, within the six months that follow said notice.

ART. 10. (1) If the mark, registered in accordance with Art. 5, or the foreign mark, registered in accordance with Art. 8, agrees entirely or in its essential details with a mark to which another person has the right, by virtue of Art. 3, for the same class of goods, or contains the name or commercial designation to which another has the right, this latter, who claims this right, may, without prejudice to other legal means that are at his disposal, address—in the Dutch Indies to the *Raad van Justitie,* in Surinam or in Curação to the *Hof van Justitie*—a petition signed by himself or by his attorney, to the end of having declared the nullity of the resignation; this petition shall be presented, in whatever concerns a mark registered in accordance with Art. 5, within the nine months that follow the publication prescribed by Art. 6, and in whatever concerns a foreign mark registered in accordance with Art. 8, within the nine months that follow the communication prescribed at the end of this article.

(2) The owner, of whom mention is made in the first paragraph, after the expiration of the term that is there indicated, may also petition in the same manner the nullification of the registration, when his right shall result from a judicial decision.

(3) During the term fixed by the first paragraph, the Public Minister may, if the mark is contrary to the provisions of the next to the last paragraph of Art. 4, petition the judicial colleges designated in the first paragraph that the registration be declared void.

ART. 11. The clerk shall within three days give notice in writing to the Auxiliary Bureau of Industrial Property of every petition in accordance with Arts. 8 and 10, and of every demand made by the Public Minister in conformity with Art. 10.

ART. 12. (1) The judicial colleges designated in the last paragraph of Art. 9 and in the first paragraph of Art. 10 shall decide in council chamber.

(2) There shall be no decision concerning a petition made by virtue of Art. 9, until after the petitioner and the Director of the Bureau of Industrial Property, respectively, shall have been given opportunity to orally sustain before the judicial college the right to registration of the mark, and the reasons that militate in favor of the refusal of registration. The petition and the simple taking into consideration by which the judicial college has thereto responded in order to fix the day for hearing shall be made known to the Chief of the Auxiliary Bureau by the petitioner within the term of fourteen days after the order shall have been issued.

(3) There shall be no decision on a petition or an application made by virtue of Art. 10 until after the regular hearing or citation of the depositor of the mark on the date fixed by the judicial college at the time of the simple taking into consideration of the petition or application; the clerk shall give advice in writing of this date to the Auxiliary Bureau of Industrial Property; and if it is a matter of a mark registered in accordance with Art. 5, notice shall be given to the applicant by notification, emanating from the petitioner or from the Public Minister, of the petition or application and of the taking into consideration that has followed the same, and this within the term of fourteen days counting from the signing of this latter.

(4) If it is a matter of a mark registered in accordance with Art. 8, the Auxiliary Bureau of Industrial Property shall give notice of the petition or application to the Bureau of The Hague; it shall communicate as soon as possible to this latter the date that the judicial college shall have fixed for the hearing, and this at least three months in advance.

(5) The Bureau of The Hague shall immediately communicate the whole to the International Bureau at Berne.

(6) At the hearing, the petitioner, and, in the case provided in the second paragraph of Art. 10, the Public Minister, may orally expound the reasons serving as basis for the petition or application.

(7) Before the adjournment of the hearing prescribed by the present article, the judge shall fix the date on which he will pronounce judgment.

ART. 13. (1) Appeal against the decision is not admissible.

(2) In the Dutch Indies (not in Surinam or in Curação), an appeal in cassation may be made within the term of one month counting from the date of the decision of the Court. If it is a matter of a mark deposited agreeable to Art. 4, or registered in accordance with Art. 5, the petition relative thereto shall be made known to the adverse interested party.

(3) If the appeal is for the purpose of having the registration of a mark ordered, the Auxiliary Bureau of Industrial Property in the Dutch Indies shall be considered as the adverse interested party.

(4) The clerk of the High Court of the Dutch Indies shall give notice in writing within three days to the Auxiliary Bureau of Industrial Property concerning any other appeal in cassation not emanating from this Bureau.

(5) If the appeal in cassation concerns one of the marks of which mention is made in Art. 8, the Auxiliary Bureau shall communicate it to the Bureau of The Hague, which shall give notice thereof to the International Bureau at Berne.

ART. 14. (1) He that has no domicile in the colony shall make election of an address for service within the colony at the time of the deposit mentioned in Arts. 4 or 7, and at the time of the sending of one of the petitions presented in accordance with Arts. 9, 10 or 13.

(2) All proceedings shall be directed to the address chosen.

ART. 15. (1) The clerk shall give notice in writing to the Auxiliary Bureau of Industrial Property, within three days, of the decision rendered by the *Raad van Justitie* at Batavia or by the *Hof van Justitie* in Surinam or in Curação.

(2) Like notice shall be given in the Dutch Indies by the clerk of the High Court in whatever concerns the issue of the appeal in cassation.

(3) In accordance with the decision of the Tribunal, having acquired the force of a *res adjudicata,* or agreeable to the decision of the High Court in the Dutch Indies, when this latter shall have given final judgment, the Auxiliary Bureau shall register the mark or take note of the avoidance of the registration in the reserve column of the public register wherein the mark shall have been recorded.

(4) The registration shall then be considered as having taken place on the date of the deposit or on that of the receipt of the notification mentioned in Art. 8.

(5) The Auxiliary Bureau shall communicate to the Bureau of The Hague the notices prescribed by the present article, if they concern one of the marks mentioned in Art. 8, as soon as the decision shall have the force of a *res adjudicata.*

(6) The said Bureau of The Hague shall notify as promptly as possible the International Bureau at Berne.

ART. 16. (1) The Auxiliary Bureau of Industrial Property shall publish:

1) The refusal of registration of a mark, mentioned in Art. 8, as soon as the term established in the second paragraph of

Art. 9 shall be expired without the petition provided in this article having been filed, or as soon as a decision rejecting this petition shall have the force of a *res adjudicata;*

2) The annulling of the registration of a mark whose description shall already have been published in accordance with Art. 6, or whose international registration shall already have been announced in the supplement of the journal of the International Bureau at Berne;

3) The forfeiture of a registration for any of the reasons indicated in Art. 18, Secs. 1 or 3;

4) The assignment, recorded in conformity with Art. 20, of a mark registered in accordance with Art. 5.

(2) The publications prescribed in the present article shall be made in the special supplements mentioned in the last paragraph of Art. 6.

ART. 17. (1) The public registers mentioned in Arts. 5 and 8 may be consulted by any person without charge in the offices of the Auxiliary Bureau of Industrial Property.

(2) Any person may obtain, at his own expense, an extract or a copy, whereof the cost shall be calculated, in the Dutch Indies, on the basis of Art. 7 of the charges for judicial expenses and emoluments in civil matters for the European tribunals, and in Surinam and in Curação on the basis of Art. 20 of the charges for judicial expenses and emoluments in civil matters.

(3) On payment of the sum of 50 cents, payable preferably by means of a stamp delivered by the Auxiliary Bureau of Industrial Property, in accordance with the model prescribed for the Bureau of The Hague, any person may receive a written reference concerning the contents of the public registers of the Auxiliary Bureau mentioned in Arts. 5 and 8.

ART. 18. (1) A registration shall cease to be of effect:

1) By the cancellation made on application of any person in whose name the registration has been made, or of any person in whose name the assignment has been recorded in accordance with Art. 20;

2) By the expiration of twenty years counting from the day on which the registration took place, in accordance with Arts. 5 or 8, if this registration has not been renewed before the expiration of this term, or if the renewal has not been repeated within like term;

3) By the forfeiture or refusal of registration in the country of origin;

4) On Dec. 31, 1913, for all marks registered that contain, even slightly altered, the name or insignia of the "Red Cross," called also the "Geneva Cross."

(2) The annulment of the registration for any of the reasons mentioned under Secs. 1 or 3 shall be entered, with indication of the reasons, in the column for this purpose of the public register wherein the mark was recorded.

ART. 19. (1) In order to secure the renewal of a mark, registered in conformity with Art. 5, the owner shall fulfill, before the expiration of the term indicated under section 2 of the preceding article, the same formalities as those indicated in Art. 4 for the first deposit.

(2) The copies filed, with which the first paragraph of Art. 4 is concerned, shall be certified, along with the date of renewal.

(3) The Auxiliary Bureau of Industrial Property shall proceed to the renewal of the registration by inserting the date in the column for this purpose of the public register wherein the mark has been recorded.

(4) After the renewal of the registration of a mark registered in conformity with Art. 5, there shall be delivered to the owner, within three days, one of the copies mentioned in the second paragraph of the present article.

(5) The fourth paragraph of Art. 5 and Art. 6 shall in addition be applicable to this mark.

(6) If it is a matter of a mark deposited in view of the renewal of registration and of the fulfillment of the formalities indicated in Art. 7, there will be occasion to apply the third and fourth paragraphs of the said article.

(7) The renewal of a mark registered in the tenor of Art. 8 cannot take place until after the Bureau of The Hague shall have transmitted the copy, mentioned in this article, of the publication provided by Art. 3 of the Arrangement of Madrid. This copy of the publication shall be legalized, with the addition of the date on which the renewal has been recorded.

(8) In the case of renewal of registration in the Dutch Indies, in Surinam, or in Curaçao, of an international mark registered anew that has been deposited in conformity with Art. 7 with the Auxiliary Bureau of Industrial Property of the colony interested, there shall be delivered to the owner, as soon as possible, a certificate with date.

(9) In cases of renewal, the second and third paragraphs of Art. 10 and the other articles of the present ordinance shall be held applicable.

(10) The Auxiliary Bureau may refuse to register the renewal when the mark is contrary to the provisions of the next to the last paragraph of Art. 4, and, in this case, it shall proceed in the manner prescribed in the first paragraph of Art. 9; after

this, the second paragraph of Art. 9, Art. 11, and the other articles of the present ordinance shall be held applicable.

ART. 20. (1) The assignment to a third party of a mark registered in accordance with Art. 5 shall be registered only if the industrial or commercial establishment, whose products the mark is intended to distinguish, has passed at the same time to the same person.

(2) The proof of what precedes shall be made by the deposit in the Auxiliary Bureau of Industrial Property of a certified extract of the document relative thereto.

(3) The assignment shall be registered, in whatever concerns marks registered in accordance with Art. 5, on the written application of the parties, or also on the application of the purchaser alone, if the assignment of the mark appears sufficiently from the extract mentioned in the preceding paragraph; and, in whatever concerns marks registered in accordance with Art. 8, after the receipt of the notice from the Bureau of The Hague relative to the registration that has been there affected, it shall be endorsed on the margin of the registration.

(4) For the registration of the assignment of a mark registered in conformity with Art. 5, there shall be due a fee of five florins, payable at the moment on which this registration shall be applied for.

ART. 21. (1) Notice shall be immediately given to the Bureau of The Hague, which shall communicate the matter to the International Bureau at Berne, of the forfeiture, or of the application for the registration of the assignment of an internationally registered mark that shall have been deposited in the Bureau of Industrial Property in conformity with Art. 7.

(2) The assignment of a like mark shall not be registered if the assignment is effected in favor of a person not of Dutch nationality, not being domiciled in one of the States adherent to the above mentioned Arrangement of Madrid, and not possessing in the territory of one of these States a serious industrial or commercial establishment serving effectively in the carrying on of industry or commerce.

ART. 22. (1) The marks that, on the entry into force of the present ordinance, shall already be registered by virtue of the provisions antedating this entry into force, shall enjoy the same protection as if they had been registered in accordance with the present ordinance. The twenty years mentioned in Art. 18, Sec. 3, shall commence to run, for these marks by counting from the day on which the registration took place in virtue of the prior provisions.

(2) For the application of Art. 7 of the present ordinance

these marks shall be considered as having been deposited in accordance with Art. 4.

ART. 23. (1) He that knowingly imports into the colony goods that falsely bear upon themselves or upon their containers a name (firm) or a mark belonging to a third party, or a mark corresponding in its essential details to that of a third party, or that bear as indications of origin the name of a determined locality, with the addition of a fictitious name or of an imaginary firm, even slightly modified, of a third party, without these goods being clearly intended to be re-exported, and whoever sells them, offers them for sale, consigns them, distributes them, or holds them in store to be sold or distributed, is liable, in the Dutch Indies, according to the nationality of the delinquent, to imprisonment at hard labor, but without irons, and in Surinam and in Curação to imprisonment for from eight days to three months, with or without a fine of from 25 to 600 florins.

(2) If, at the time that the crime is committed, there have not yet expired five years since a prior conviction, pronounced against the same criminal for a like crime, has become final, the maximum of the penalties provided for hereinbefore shall be doubled.

ART. 24. The present ordinance shall not be applicable to marks established by public authority.

ART. 25. On the entry into force of the present ordinance there shall cease to be of effect the Royal ordinances of Nov. 9, 1893, Nos. 24, 25 and 26 (*Nederlandsch Staatsblad,* Nos. 159, 160 and 161; *Indisch Staatsblad,* No. 305; *Gouvernementsblad van Suriname,* No. 31 and *Publicatieblad van Curação,* No. 20); insofar as they have been modified in the last place by the ordinances of March 2, 1908, No. 64; (*Nederlandsch Staatsblad,* No. 79; *Indisch Staatsblad,* No. 365) and Aug. 18, 1910, Nos. 31 and 32; (*Nederlandsch Staatsblad,* Nos. 258 and 259; *Gouvernementsblad van Suriname,* No. 74 and *Publicatieblad van Curação,* No. 52) the same as Arts. 10, kept in force, of the Royal ordinances of April 6, 1885, No. 13 (*Indisch Staatsblad,* No. 109), Feb. 3, 1890, No. 26 (*Gouvernementsblad van Suriname,* No. 7) and Feb. 3, 1890, No. 27 (*Publicatieblad van Curação,* No. 2).

ART. 26. The present ordinance may be cited under the title of "Regulation for Industrial Property in the Colonies, 1912."

ART. 27. The present ordinance shall become effective on the date that shall be fixed, in the Dutch Indies, by the Governor General, and in Surinam and in Curação by the Governor.

Our Ministers of the Colonies, of Agriculture, Industry and

Commerce, are charged, each for whatever concerns him, with the execution of the present ordinance, which shall be published in the *Staatsblad*, whereof a copy shall be sent to the Council of State.

Given at Loo, August 29, 1912.

CYPRUS

LAW NO. VIII, JULY 11, 1910

Short Title

1. This Law may be cited as the Trade Marks Registration Law, 1910.

PART I

DEFINITIONS

2. In and for the purposes of this Law (unless the context otherwise requires):—

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A "trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Law:

"The register" shall mean the register of trade marks kept under the provisions of this Law:

A "registered trade mark" shall mean a trade mark which is actually upon the register:

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by Rules of Court, and in other cases, prescribed by this Law or the Rules thereunder:

"The Court" shall mean the Supreme Court of Cyprus.

Register of Trade Marks

3. There shall be kept for the purposes of this Law at the Office of the Chief Collector of Customs at Nicosia, or by such other officer or at such other place as the High Commissioner may at any time direct, a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Chief Collector of Customs, or of such other officer appointed as hereinbefore mentioned, who is in this Law referred to as the Registrar.

Trust Not to be Entered on Register

4. There shall not be entered in the register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and Extract from Register

5. The register kept under this Law shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Registrar of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade Mark Must be for Particular Goods

6. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable Trade Marks

7. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3) and (4), shall not, except by order of the Court, be deemed a distinctive mark;

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used in Cyprus as a trade mark by the applicant or his predecessors in business before the first day of January one thousand eight hundred and ninety-eight, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Law.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Court or the Registrar, as the case may be, may, in the case of

a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured Trade Marks

8. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by the Court or the Registrar, as the case may be, having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on Registration

9. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would be reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

REGISTRATION OF TRADE MARKS

Application for Registration

10. (1) Any person claiming to be proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Law the Register may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at the decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Court hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving

notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of Application

11. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to Registration

12. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the Court bring forward further material for the consideration of the Court.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those

stated by the opponent as herein-above provided except by leave of the Court hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar shall have power in proceedings under this section to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in Cyprus the Registrar or the Court, as the case may be, may require such party to give security for costs of the proceedings before him or if relative to such opposition or appeal and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers

13. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of Registration

14. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such

date shall be deemed for the purposes of this Law to be the date of registration.

Certificate of Registration

15. On the registration of a trade mark the Registrar shall under his hand and seal issue to the applicant a certificate in the prescribed form of the registration of such trade mark.

Non-completion of Registration

16. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS

17. Except by order of the Court or in the case of trade marks in use in Cyprus before the first day of January one thousand eight hundred and ninety-eight no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival Claims to Identical Marks

18. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Court.

Concurrent User

19. In a case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and Transmission of Trade Marks

20. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall

be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Apportionment of Marks on Dissolution of Partnership

21. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Law as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

Associated Trade Marks

22. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the Court or the Registrar, as the case may be, hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined Trade Marks

23. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Law be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of Trade Marks

24. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) Statements of the goods for which they are respec tively used or proposed to be used; or

(b) Statements of number, price, quality, or names of places; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) Colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and User of Associated Trade Marks

25. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Law user of a registered trade mark is required to be proved for any purpose, the Court or the Registrar, as the case may be, may if and so far as it or he shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION

Duration of Registration

26. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Law.

Renewal of Registration

27. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on Expiry of Period of Registration

28. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may

remove such trade mark from the register, subject to such conditions, if any, as to its restoration to the register as may be prescribed.

Status of Unrenewed Trade Mark

29. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF THE REGISTER

Correction of Register

30. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by Law to act in his name:

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of Assignments, etc.

31. Subject to the provisions of this Law where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of Law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court.

Alteration of Registered Trade Mark

32. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may

think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of Register

33. Subject to the provisions of this Law—

(1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or, by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in an entry in the register, make such order for making, expunging, or varying such entry, as it may think fit:

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register:

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section:

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the register accordingly.

Non-user of Trade Mark

34. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods, and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of Registered Proprietor

35. Subject to the provisions of this Law—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of Proprietor of Trade Mark

36. Subject to the provisions of section 38 of this Law and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered and shall give to such person the right to bring an action against any infringer thereof for an injunction to restrain such infringement and to recover from such infringer such damages as such person so bringing such action can prove to have been occasioned to him by reason of such infringement and for the destruction of all such infringing trade marks: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be Prima Facie Evidence of Validity

37. In all legal proceedings relating to a registered trade mark (including applications under section 33 of this Law) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be Conclusive After Seven Years

38. In all legal proceedings relating to a registered trade mark (including applications under section 33 of this Law) the registration of such trade mark shall after the expiration of seven years from the date of such registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 9 of this Law.

Provided that nothing in this Law shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his

predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section 19 of this Law.

Unregistered Trade Mark

39. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use in Cyprus before the first of January one thousand eight hundred and ninety-eight and has been refused registration under this Law. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement

40. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of Name, Address, or Description of Goods

41. No registration under this Law shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing-off" Action

42. Nothing in this Law contained shall be deemed to affect rights of action against any person for passing-off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of Validity

43. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between advocate and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to Have Notice of Proceeding for Rectification

44. In any legal proceeding in which the relief sought in-

cludes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Costs

Costs of Proceedings Before the Court

45. In all proceedings before the Court under this Law the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Evidence

Mode of Giving Evidence

46. In any proceedings under this Law before the Registrar the evidence shall be given by affidavit in the absence of directions to the contrary, but, in any case in which he shall think it right so to do, the Registrar may (with the consent of the parties) take evidence *viva voce* in lieu of or in addition to evidence by affidavit. Any such affidavit may in the case of appeal be used before the Court.

In case any part of the evidence is taken *viva voce* the Registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, have the same powers in all respects as a Court of Magisterial Jurisdiction.

Sealed Copies to be Evidence

47. Printed or written copies or extracts of or from the register, purporting to be certified by and under the hand and seal of the Registrar, shall be admitted in evidence in all Courts in Cyprus and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to be Evidence

48. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Law, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

PART II

Powers and Duties of Registrar of Trade Marks

Exercise of Discretionary Power by Registrar

49. Where any discretionary or other power is given to the Registrar by this Law or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar

50. Except where expressly given by the provisions of this Law or rules made thereunder there shall be no appeal from a decision of the Registrar, but the Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section 33 of this Law), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of Agents

51. Where by this Law any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Law or in particular cases by special leave of the Court be done by or to an agent of such party duly authorized in the prescribed manner.

Registrar May Take Directions of King's Advocate

52. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Law apply to the King's Advocate for directions in the matter.

Annual Report of Registrar

53. The Registrar shall on the first day of April in every year issue a report respecting the execution by him of this Law.

Power of Registrar with Approval of High Commissioner in Council to Make Rules

54. (1) Subject to the provisions of this Law the Registrar may with the consent and approval of the High Commissioner in Council from time to time make such rules, prescribe such forms, and generally do such things as he thinks expedient:

(a) For regulating the practice under this Law.

(b) For classifying goods for the purposes of registration of trade marks.

(c) For making or requiring duplicates of trade marks and other documents.

(d) For securing and regulating the publishing and selling

or distributing in such manner as the Registrar think fit, of copies of trade marks and other documents.

(e) Generally, for regulating the business of the office in relation to trade marks and all things by this Law placed under the direction or control of the Registrar.

(2) Any rules made in pursuance of this section shall be advertised in the *Cyprus Gazette*.

(3) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Law.

Fees

55. There shall be paid in respect of applications and registration and other matters under this Law such fees as may be prescribed by the Registrar with the consent and approval of the High Commissioner in Council.

SPECIAL TRADE MARKS

Standardization, etc., Trade Marks

56. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Registrar may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Registrar.

OFFENCES

Falsification of Entries in Register

57. If any person makes or causes to be made a false entry in the register kept under this Law or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable for every offence, on summary conviction, to a fine not exceeding fifty pounds and in default of payment thereof to imprisonment for a period not exceeding six months.

Penalty on Falsely Representing a Trade Mark as Registered

58. (1) Any person who represents a trade mark as registered which is not so shall be liable for every offence, on summary conviction, to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

REPEAL: SAVINGS

Repeal and Savings

59. The Ottoman Trade Mark Law dated 24 Jemaziul-Akhir 1288 (tenth day of September, one thousand eight hundred and seventy-one) and all subsequent amendments thereto which were in force in Cyprus on and including the 30th day of July, 1878, are hereby repealed: Provided that nothing in this Law shall be construed to affect the validity in Cyprus of any trade mark duly registered under the provisions of the said Law between the 9th day of September, 1871, and the 30th day of July, 1878, and any such trade mark may upon proof of such registration produced to the satisfaction of the Registrar be registered as a trade mark under the provisions of this Law without payment of any fee or fees in connection with such registration.

Date of Operation of the Law

60. This Law shall come into operation on a day to be notified in the *Cyprus Gazette.*

CZECHOSLOVAKIA

LAW (PROVISIONAL) NO. 471 OF JULY 24, 1919

Law Containing Provisional Dispositions for the Protection of Marks of Manufacture or of Commerce

Article 1. Marks of manufacture that, until the day on which the present law has been promulgated, have been registered by one of the Chambers of Commerce and of Industry of the former Austrian-Hungarian Monarchy, shall be protected in the territory of the Czechoslovakian Republic with priority extending back to the first deposit, on condition that the proprietor of the mark, if he has not done so prior to the promulgation of the law, declare, within the three months that follow a date fixed by a later ordinance, at the competent Chamber of Commerce and of Industry of the country, or, for the proprietor of an establishment situated in a foreign country granting reciprocity, at the Chamber of Commerce and of Industry at Prague, that he claims protection for the Czechoslovakian territory.

At the same time as their application, the applicants shall deposit three copies of the mark whereof the identity shall be certified by the Chamber of Commerce and of Industry that has acted in the prior registration; applicants whose marks are registered by a Chamber of Commerce and of Industry of the former Austria-Hungary, exclusive of the Czechoslovakian Republic, shall produce in addition a certified extract of the Trade Mark Register.

The duration of protection already expired shall be counted in the legal period of ten years.

Marks belonging to foreigners and that have been registered only by the Chamber of Commerce and of Industry at Vienna, or by that of Budapest, shall be protected on petition in all the territory of the Czechoslovakian Republic, but under the reservation of the rights of third parties for the part of the territory in which they have not heretofore been protected.

Art. 2. The Law of June 27, 1908 (*Reichsgesetzblatt,* No. 123) is abrogated insofar as it attributes matters of marks to the Ministry of Public Works.

Art. 3. The ordinance issued June 24, 1915, by the Ministry of Public Works in agreement with the Ministry of Commerce (*Reichsgesetzblatt,* No. 177) is abrogated, and the delay fixed in §1, final paragraph, of the said ordinance, shall com-

mence to run on the date on which the present law shall become of effect.

ART. 4. The Austrian laws of January 6, 1890* (*Reichsgesetzblatt,* No. 19), and March 17, 1913 (*Reichsgesetzblatt,* No. 65), and the law of July 30, 1895† (*Reichsgesetzblatt,* No. 108), shall remain in force with the following modifications, and they are at the same time declared applicable to all territory of the Czechoslovakian State.

ART. 5. The law of January 6, 1890* (*Reichsgesetzblatt,* No. 19), modified by that of March 17, 1913 (*Reichsgesetzblatt,* No. 65), is modified as follows:

§3, No. 1, is replaced by the following provision: "that are composed exclusively of portraits or of names of the President of the Republic or of other persons that have been honored by the State and are generally known."

§4 is replaced by the following provision: "Marks that have as elements the portrait or the names of the President of the Republic or of other persons that have been honored by the State and are generally known, or public arms, or a distinction, may be registered only if the right of usage of these private insignia has been previously established in conformity with the dispositions in force."

§15, the words: "five florins" are replaced by "fifty crowns."

Actions of which it is a question in §30, paragraph 1, must be lodged anew.

ART. 6. §32, paragraphs 4, 33, 34, and 35, of the law of January 6, 1890 (*Reichsgesetzblatt,* No. 19), and Art. 5, paragraphs 3, 6, and 7, of the law of March 17, 1913 (*Reichsgesetzblatt,* No. 65), are abrogated.

ART. 7. The law of July 30, 1895 (*Reichsgesetzblatt,* No. 108), is modified as follows:

The next to the last paragraph of §4 is replaced by the following provision: "Delays expired subsequent to October 28, 1918, are prolonged by six months, counting from the day on which the mark has been deposited in the country."

The first paragraph of §5 is replaced by the following provision: "He that has no fixed residence or domicile within the territory of the Republic may avail himself of the rights stipulated in the before cited laws or in the present law only on condition of appointing an attorney in the Czechoslovakian Republic.

§§8 and 9 are abrogated.

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* For text of law referred to, see Austria.

† The law of 1895 is explanatory only.

ART. 8. Hungarian Legislative Articles 2 of 1890 and 41 of the year 1895 are abrogated.

ART. 9. The present law shall become of effect the day on which it shall be promulgated.*

ART. 10. The Minister of Commerce and the Minister of Justice are charged with the execution of the present law.

* August 11, 1919.

DANZIG

(FREE CITY OF DANZIG)

LAW OF JULY 14, 1921*

. . . . . .

II. Marks of Manufacture and of Commerce

Section 13. Marks of manufacture of which a person makes use in his commercial business for distinguishing his goods from those of others shall be protected through registration in the Trade Mark Register in conformity with the present law.

There shall be excepted:

a) Free marks;

b) Marks lacking in distinctive character;

c) Marks that contain the Arms of the State or those of a locality, of a commune, or of a communal association situated in the Free State, unless the proprietor presents the authorization of the State, of the commune, or of the association;

d) Marks that contain scandalous representations or indications not corresponding to actual circumstances and possible of inducing to error;

e) Marks that contain the Red Cross of Geneva or the words "Rotes Kreuz," unless the owner of the mark furnish proof that he is authorized to this effect by the Government of the Free State.

Sec. 14. The owner of a registered mark shall have the exclusive right of affixing the mark to the goods of the kind declared, or to their wrappings or containers; of putting on the market the goods thus marked, of offering them for sale, and of affixing the mark to communications addressed to his customers, or to his announcements.

Sec. 15. The protection of a mark does not extend its effect;

a) As regards him that affixes only his name, his commercial firm, his domicile, as well as indications concerning the mode, the time, and the place of manufacture, or the quality, the purpose or the price, the quantity or the weight of the merchandise, upon goods or their wrappings or their containers, or who makes use of similar indications in communications to his customers or in his announcements;

b) With regard to him in whose favor the mark has been

* Matter omitted—indicated by asterisks—refers to patents only.

registered in virtue of a prior deposit for the same goods or for goods of the same class.

SEC. 16. The right resulting from registration may pass to a third party only along with the enterprise to which the mark pertains.

SEC. 17. The duration of the protection of the mark is unlimited. It shall commence upon the day following that of the deposit. Except in the case of renunciation, the protection shall be extinguished on the expiration of every ten years unless, within the three months that follow the end of this period, there shall have been paid a fee of 50 marks. The payment of the fee before the commencement of the term shall be inadmissible and without legal effect.

SEC. 18. Application for registration of a mark of manufacture shall be presented in writing and only at the Bureau of Industrial Property at the District Tribunal (*Amtsgericht*) of Danzig. Each mark must constitute the object of a separate deposit. The deposit must contain an exact representation of the mark, the application for registration of a mark, as well as an indication of the establishment in which the mark will be employed and of the goods for which it is intended. The goods shall be indicated in accordance with classes whose extent and number shall be fixed by the Senate. The representation may be accompanied by a description of the mark.

If it is a question of a mark belonging exclusively to a foreign enterprise, there shall be included in the deposit proof that the depositor has had the same mark protected abroad. At the moment of the deposit there must be paid a fee of 50 marks if the mark is intended for goods of a single class. If the mark is intended for merchandise of several classes, it will be necessary to add for each additional class a fee of 10 marks. If, during the term of protection, the effects of registration are to be extended to other classes of goods it will be necessary to proceed to a new registration.

SEC. 19. If the deposit fulfills the legal requirements (Secs. 18 and 33), the mark shall be inscribed in the Register without there being occasion to inquire if it is protectable (Sec. 13). The Register must contain: a representation of the mark, a reference to the description that is to be furnished, the name and the domicile of the depositor or of his constituted attorney, indication of the enterprise and list of the goods for which the mark is intended, the date of the deposit, the expiration of the mark, and, finally, any modification duly shown in attested form, with proof in support, and concerning the personality of the owner of the mark.

Sec. 20. Any person shall have the right of demanding the cancellation of a mark if, at the time of the decision as to the complaint lodged to this end, either the mark is not protectable in accordance with Sec. 13, or the line of business to which it belongs does not exist.

The right of demanding cancellation shall belong, in addition, to him in favor of whom the mark is registered in virtue of a prior deposit for the same goods or for goods of the same class. If this condition concerns only part of the goods, then the right of demanding cancellation shall be reduced in the same proportion.

Sec. 21. The application of the provisions of the present law is not barred by modifications introduced in names, firms, signs, arms of third persons or in any other designations of goods, provided that, despite these modifications, there exists the possibility of confusion in trade.

III. General Provisions

Sec. 22. Whoever is not domiciled in the territory of the Free City may not effect a deposit save through the intermediary of an attorney domiciled within the said territory; neither may he safeguard the rights emanating from registration, save through the intermediary of such an attorney. Besides, he shall be authorized to designate one or several attorneys. The attorney must prove his qualification by means of a written power of attorney. If several attorneys have been appointed, they may exercise their power either together or separately. Any provision to the contrary inserted in the power shall not be taken into consideration.

Sec. 23. When the registration has been effected, the Bureau of Industrial Property shall deliver, in the name of the depositor or of his assign, a certificate wherein it shall declare, in a manner plainly evident, that the registration has taken place upon application "without official verification of the application as to protectability."

Sec. 24. Registers shall be kept by the Bureau of Industrial Property.

Any person may consult the Registers, as well as the deliberations that are the bases of registration.

The inscriptions in the Registers shall be published, in the form of monthly synoptic tables, at the expense of the persons protected, in the official organ intended for publications of the Senate.

Sec. 25. For procedure relative to appeal against decisions of the Bureau of Industrial Property there shall be applied the provisions of the law of the Realm (*Reich*) as to mat-

ters of non-contentious jurisdiction.

SEC. 26. In whatever concerns exceptions to the judgment of the judicial authority, and as regards notifications, there shall be applied the provisions concerning non-contentious jurisdiction; besides, and insofar as there be need, and particularly in whatever concerns restitution to former state, there shall be applied the provisions that apply in civil procedure.

SEC. 27. Whoever, knowingly or through negligence, injures a right protected by a registration effected by virtue of the present law shall be bound to indemnify the party interested.

. . . . . .

SEC. 28. Whoever, knowingly, injures a right protected by a registration effected by virtue of the present law shall be punished by a fine or by imprisonment, or by the two penalties together.

Criminal prosecution shall take place only upon complaint. The complaint may be withdrawn.

If a penalty is pronounced, the judgment may order that the condemnation be published at the cost of the guilty party. In such a case, the judgment shall fix the mode of publication and the term within which it must be made.

SEC. 29. If the injured party intervenes in the criminal procedure as a civil party, he may demand that the judge fix, during the course of the procedure, punitive damages, which shall be paid to him. If these damages are allowed him, the party injured must renounce any other indemnity.

SEC. 30. Actions for violation of a right protected by virtue of the present law shall become outlawed after three years, counting from each of the acts that give occasion to such action.

SEC. 31. For all civil actions based upon the present law, the competent tribunal shall be the *Landgericht* of the Free City of Danzig, whatever be the value of the object in litigation.

SEC. 32. The Senate is authorized to promulgate other provisions concerning the conditions and formalities of a deposit.

SEC. 33. The Senate of the Free City of Danzig may at any time increase or diminish the fees fixed by the present law; it may likewise decide what shall be the modes of payment that may be assimilated to payments in cash.

It may order that inscriptions on the Register be published at short intervals and that the expenses of these publications (Sec. 24, par. 3) be borne in whole or in part by the State.

SEC. 34. Rights and contracts that emanate from a deposit effected in Germany up to the entry into force of the present

law shall be recognized as valid in the Free City, in conformity with German legislation.

SEC. 35. Citizens or subjects of foreign countries shall enjoy, within the meaning of this law, in the Free City, without further formality, the same rights as these countries themselves grant, in case of reciprocity, to the citizens of the Free City.

SEC. 36. The present law shall become effective on the day on which it shall be published.*

* Published July 20, 1921.

DENMARK

LAW OF APRIL 11, 1890, AS AMENDED DECEMBER 19, 1898, MARCH 29, 1904, AND JANUARY 12, 1915*

ARTICLE 1. Whoever carries on within the Kingdom a manufacture or a trade, agriculture, mining, commerce or other industry, may, in addition to the right belonging to him of using his firm name or the name of any real property belonging to him as trade marks, obtain the sole right, by means of a registration in accordance with this law, to distinguish his goods from others, by means of a special trade mark. This right shall embrace all kinds of his goods, unless it shall have been restricted to special classes on registration.

The marks are to be placed on the goods themselves or on their coverings (wrapper, case, etc.).

ART. 2. The Register of Trade Marks, as hitherto, shall be kept for the whole Kingdom by a duly appointed Registrar in Copenhagen.

ART. 3. Any person desiring to register a trade mark must either deliver an application to the Registrar, or send the same by post, together with a clear description of the same, giving his name or firm, calling and postal address, and also state therein whether the marks in question are to apply only to special classes of goods; in this latter case, to which.

With the application there must be delivered:

1) A representation of the mark on durable paper, in triplicate, of at most 10 centimeters in height (3.82 Tommer) and 15 centimeters (5.74 Tommer) in breadth;

2) Two blocks (electrotypes) of the same size necessary for printing the mark;

3) Forty (40) kroner for payment of the registration and publication.

The Registrar shall send as soon as possible to the applicant, or to the corresponding address furnished by the latter, a written acknowledgment of the receipt of the application on which the day and hour of the application shall be duly marked. This certificate shall have a copy of the mark attached thereto.

ART. 4. A trade mark shall not be registered:

1) If it lacks particular characteristics—in the determination of which all circumstances in question shall be taken into consideration, particularly so the duration of use that may have

* For further amendment see also Sec. 2 of Law of December 19, 1898, following.

been made of the mark—or, if it consists entirely of words that according to ordinary conception are adapted to serve as an indication of the locality where the goods were manufactured or dealt in, the time when the goods were manufactured, the nature, quality, purpose, quantity or price of the same; or when in consequence of vernacular language or idioms commonly employed in the respective commercial circles it is known as a designation for the goods themselves or for the goods emanating from a producer other than the applicant;

2) If, without authorization, it contains another name or another firm than that of applicant, or the name of another person's real estate;

3) If, without authorization, it contains a national coat of arms or emblem, or a Danish municipal coat of arms or emblem;

4) If it contains representations apt to cause offence; and

5) If it is absolutely identical with a trade mark already registered by another or for the registration of which an application has already been duly filed; or if it discloses such a resemblance to the same that the marks taken as a whole may be readily confounded with each other, notwithstanding differentiating details; the registration shall not, however, be refused if the similarity lies in the points detailed in Art. 7, or if the marks relate to different classes of goods.

Art. 5. If the registration be refused, notice thereof shall immediately be given to the applicant in writing, together with the reasons for refusal (in accordance with Art. 3), If the applicant consider the decision erroneous, he may, within two months, submit the decision of the Registrar to the Ministry of the Interior, without prejudice to his right to have the matter determined in a court of law.

Art. 6. The registration shall take place provided that no obstacles to the same are presented, and the publication in connection therewith shall take place at the earliest possible moment in the *Statstidende* and in the *Registreringstidende* published by the Administration of Public Works.

Art. 7. If a registered trade mark contains such signs or words that, according to section 4, it cannot be separately registered, or when the same consists partially or entirely of signs and marks that are commonly employed in certain branches of establishments, other persons shall not thereby be precluded from employing such designations as trade marks or as a part thereof.

Art. 8. The right to a registered trade mark can only be transferred in connection with the business for which it is used. Should any person transfer his business to another, the right to

the registered mark passes to the buyer unless a special arrangement therefor be made to the effect that the vendor retain the right to the mark or that both parties shall use the same mark for different classes of goods.

ART. 9. The protection for a registered mark expires unless the application for renewal be made within ten years, reckoned from the date of registration for the first term, and within ten years from the last date of renewal for the following ones. The Registrar shall give notice by registered letter to the applicant or his agent, at least three months before the expiry of the above named time, that the protection of the mark shall cease if the renewal be not made in time.

Any person desiring to renew the registration of his trade mark must file a written application in the form prescribed by Art. 3, together with a facsimile of the mark and ten (10) kroner for the registration tax. If in the meantime the mark be registered for another person, the applicant for renewal must, with his application, establish his right to the same.

The renewal shall be entered in the Register as speedily as possible, and the applicant be informed of the completion as prescribed in Art. 3.

Should the Registrar find the application to be defective, he shall refuse the renewal; in the event of an appeal recourse shall be made to Art. 5.

ART. 10. If, in case of an appeal, the Ministry of the Interior finds that a trade mark should not have been registered, having regard to the provisions of Art. 4, Nos. 3 and 4, its removal from the Register may be ordered, without prejudice to the right of the applicant to submit this decision to the courts.

If there be registered a trade mark that consists only of figures or marks that are used in a certain commercial line, the cancellation of such may be demanded by anyone that carries on a similar business. Both in this case as well as that in which any party considers that the registration of a trade mark will cause him damage, the removal of the mark in question shall depend on a judicial decision.

In case the registration of a trade mark is refused on the ground of Art. 4, No. 5, and if applicant, upon the lodging of a suit against the owner of the previously applied for or registered mark, proves that this mark has originally been used by him, and that the same has been appropriated by other parties, then he may be declared, by way of judgment, to be entitled to have the mark registered for himself and the exclusive right to the use of the mark may be given him, which mark he may claim, since the mark has been applied for by other parties, provided

that he (applicant) institutes an action within one year from the time of the publication of the registration of the mark in the *Statstidende.*

ART. 11. If the registration of a mark be declared void, or the protection for a registered mark has expired or the person thereto entitled desire it, such mark shall be removed from the Register and the erasure published in the papers named in Art. 6.

If a mark be canceled by command of the Ministry of the Interior, conformably with Art. 10, the Registrar shall communicate the circumstances to the owner of the mark.

ART. 12. Any person employing on goods exposed for sale or on the packages of the same the name or firm of another, or the name of real property belonging to another, or the registered trade mark of another, and also any person selling such goods, can on the demand of the injured party be legally restrained from further employing the mark in question, and from selling the goods so marked.

If, however, he knew that he was doing an injustice to another, he may be sentenced to a fine of from 200 to 2,000 kroner, and, in case of repetition, to the same penalty or imprisonment, and he may also be compelled to give compensation for the damages caused, and also to remove such marks from all goods and packages that are in his possession or stand at his disposal, or to destroy the same.

ART. 13. The regulations of Art. 12 also apply, if the name or the firm, or the name of real property belonging to another, or the registered trade mark, be reproduced, not completely, in fact, but still so nearly so that, in spite of single small differences, one is easily mistaken for the other.

ART. 14. Where reciprocity is granted, it may be proclaimed by Royal Decree that the provisions of the above law shall apply to those who carry on any of the businesses enumerated, in Art. 1, outside the Kingdom. In this case the paragraphs of the law observing the following conditions shall come into application as regards the trade mark to be registered:

1) The application must be accompanied by a proof wherein it is shown that the applicant has fulfilled all the requisite conditions for obtaining protection of the trade mark in his respective foreign State.

2) The applicant shall accept the Maritime and Commercial Court at Copenhagen as the competent authority and shall nominate in addition an attorney resident within the Kingdom who can appear for him.

3) The trade mark will not be granted to a greater extent

nor protected for a longer time than in the foreign state.

The following regulations can be applied by Royal Decree for those marks that are registered in a State that accords special privilege to Danish marks.

4) . . . (Repealed by law of January 12, 1915. . . .

5) Should any person within four months at most after the mark is published in a foreign State petition the registration in this Kingdom, such application shall be regarded as having been made simultaneously with that in the foreign State.

6) Should registration be refused under No. 5 of Art. 4 and the applicant can prove to the court, as against the owner of the earlier registered mark, that the same was originally used by him and that the other party had merely appropriated the same, he shall obtain by order of the court the registration of his mark with the sole right of employing it on the goods to which he had formerly applied it at the time the opposing mark was registered; this applies, however, only if he make application in the matter within six months after the commencement of the registration of the opposing mark. No limitation, however, of the rights enumerated in Art. 10, paragraph 3, will be made in this case.

7) Should a convention be concluded with any country whose legislation on trade marks coincides with this law, old trade marks that in such country are legally registered by those carrying on business in iron or timber and which consist solely or mainly of ordinary figures, letters or names, shall, if protected in the foreign country, enjoy the same protection in this Kingdom, so that others shall neither be allowed to use these names, letters or figures on similar goods nor designate their firm or name with the same initial letters. The registration having this effect shall, however, only take place within a certain time which will be more precisely fixed by Royal Decree and the advertisement of the registration shall contain the class of goods, as well as the grounds, for the registration.

Art. 15. Rules may be prescribed by Royal Decree that the protection given by means of this law may be also enjoyed upon such conditions as are described in detail by the decree in question, by such parties as carry on business in Iceland or the Danish West Indies,* such as dealt with in Art. 1.

Art. 16. More detailed regulations for the arrangement, form and utilization of the marks, the publication of that part of the *Registreringstidende* treating thereof, as well as the rendering of accounts to the State Treasury, will be issued by the Minister of the Interior, who shall also appoint the Registrar.

* Now Virgin Islands of the United States, which see.

ART. 17. Matters of civil right that shall arise with reference to the regulations contained in the above law shall be regarded as commercial matters.

Public actions brought under Art. 12, paragraph 2, shall be referred to the public police court and complaint may be made by anyone claiming injury through breach of the law.

ART. 18. Any and every person shall be allowed to obtain information by inspection of, or by extracts from, the Register, but the designs in the same shall not be reproduced.

Two (2) kroner shall be paid to the State Treasury for an extract from the Register or an original application. The Register may be inspected free of expense.

ART. 19. The above law shall come into force in place of the one promulgated on July 2, 1880; it shall not, however, affect trade marks registered under that law.

The Government shall be authorized by Royal Decree to put this law in force in the Faroe Islands, with special regulations suitable to the conditions of these islands. All persons are to be bound by this law hereafter.

LAW (AMENDATORY) OF DECEMBER 19, 1898

SECTION 1

. . . . . .

SECTION 2

This law shall take effect four months from its publication in the Law Gazette (*Lovtidenden*).

If a business man, after the publication of this law, lawfully uses a special trade mark that consists exclusively or principally of words devoid of peculiar form, but which can be considered as a specially invented designation for certain kinds of goods, for which he uses the trade mark, and if he makes application for trade mark within three months after the law takes effect, in the manner prescribed by Sec. 3 of the Law of April 11, 1890, no one that has not made prior use of the mark by reason of a prior application can obtain the right to the same mark or to marks that resemble same or can be confounded therewith.

DOMINICAN REPUBLIC

LAW OF MAY 16, 1907, AS AMENDED JULY 18, 1912, AND NOVEMBER 14, 1914

ARTICLE 1. Any manufacturer or merchant shall have the right to distinguish his wares or products by means of special marks.

ART. 2. Marks of manufacture may be made up of anything not prohibited by this law and which may distinguish certain articles from others identical or similar of different origin. Any name, signature or firm, letters or ciphers, will serve for this purpose only if used in a distinctive form. Marks of manufacture may be used on the articles themselves, or on the wrappings or packages which may contain them.

Guarantees

ART. 3. With the object of guaranteeing the ownership and the exclusive use of said marks, it is indispensable that they be registered, deposited, and published in accordance with the terms of the present law.

Application

ART. 4. In order to effect registry it will be necessary that the applicant, or whoever legally represents him, shall direct to the Secretariat of State for Public Industry, on stamped paper of the third class, an application that shall be accompanied by two or more copies or facsimiles of the mark, and, also, a detailed description of what constitutes the mark.

PARAGRAPH. The application shall likewise contain a declaration concerning the class of industry or trade for which it is intended, the calling of the petitioner, and the place of his residence.

Grant of Certificate of Registration

ART. 5. The Chief Clerk of the Ministry of Industry and Public Works* shall certify each one of the models, the day and hour upon which they are received, and, in case of the registration being ordered, will deposit one of said models in the archives of the Ministry and will deliver one to the interested person, together with the certificate of registration duly numbered.

Publication

PARAGRAPH. There shall be published in the *Gaceta Oficial* the certificate of registration, which shall contain the charac-

* Articles 4 and 8 (amendatory) mention the procedure as being supervised by the Secretariat of State for Public Industry.

teristic features of the mark, copied from the declaration required by Art. 4.

Prohibitations

ART. 6. Registration shall be forbidden of such marks as contain:

1) The coat of arms, medals, or insignia, either public, official, national, or foreign except in the case of its due authorization previous to the passage of this law;

2) A name or firm that the petitioner may not use legally;

3) The indication of a determined locality or establishment that is not that of the origin of the article, even though to such indication there be added or not a fictitious name or that of another;

4) Words, pictures, or figures that involve offense to individuals or to public decorum;

5) The reproduction of any other mark already registered for an article of the same kind;

6) The total or partial imitation of a mark already registered for a product of the same kind, which might lead the consumer into error or confusion.

PARAGRAPH. The possibility of error or confusion shall be considered as such whenever the differences between two marks cannot be recognized without due examination or comparison, in which event it is to be subject to the decision of the Minister of Industry and Public Works, assisted by the Corps of Councillors.

Rules for Registration

ART. 7. In the registration of marks of manufacture the following rules shall be observed:

1) Precedence as regards the day and hour of presentation of the mark will establish the preference to be given to the petitioner as regards registration. In the case of the simultaneous presentation of one or more identical or similar marks, the one shall be admitted that shall have been used or possessed during the greater length of time, and, this requisite lacking, none of said marks shall be registered until the parties concerned shall modify it;

2) In the case of any doubt existing as regards the use or possession of a mark, the Minister of Industry and Public Works shall order that the parties interested adjust the question before the Commercial Court, and then he shall proceed to effect the registration in conformity with the judgment pronounced.

Term

ART. 8. The registration of a mark shall be valid to all effects for ten, fifteen, or twenty years, and each shall be sub-

ject to a fee that is fixed in the following manner: five pesos for those of ten years; ten pesos for those of fifteen years; and fifteen pesos for those of twenty years.

There shall not be accepted in the Bureau of the Secretary of State for Industry any application that is not accompanied by a receipt showing that the party interested has paid in some Office of the Treasury the sum that, according to this article, corresponds to it.

This sum shall remain in the Office of the Treasury as a deposit until the Secretary of State for Public Industry decides concerning the application. If the mark shall be registered, said sum shall pass to form part of the public funds, and, in the contrary case, it shall be refunded to the party interested.

On the expiry of the term during which the registration is valid, it may be renewed through payment of the fees that are here stipulated.

The registration shall be considered null and without effect if, within the term of one year, the owner of the mark registered makes no use of it.

Assignments

ART. 9. The mark may only be transferred with the industry of the product or the business for which it was adopted, due annotation being made in the Register, in consideration of authentic documents. A like annotation shall be made, if, once the firms changed, the mark should still exist. In both cases the publication of the same shall be necessary.

Infractions—Punishments

ART. 10. A fine of 100 pesos, gold, to be turned into the Treasury, shall be imposed upon:

1) Anyone that uses the legal mark of another person;

2) Anyone that reproduces, in its entirety or in part, in any way whatsoever, and without the consent of the owner or of his legal representative, any registered and published mark of manufacture;

3) Anyone that imitates a mark of manufacture in such a way as to deceive the consumer;

4) Anyone that uses such imitation mark;

5) Anyone that sells or offers for sale articles that display an imitation mark, provided that he cannot prove its origin;

6) Anyone that makes use on his products of a commercial name or that of a firm that does not belong to him, whether it constitutes or not a part of a registered mark.

PARAGRAPH. To determine such imitation as is alluded to in numbers 4 to 6, inclusive, of this article, it is not necessary that the similarity of the mark be complete; it will be sufficient

that there be a possibility of error or confusion, in accordance with the exposition of number 6 or Art. 6.

SECOND PARAGRAPH. Usurpation of a commercial name or that of a firm, treated in number 6 of the present article, will be considered as existing whether the reproduction be complete or whether there be omissions, additions, or alterations, provided that there exist the same possibility of error or confusion on the part of the consumer.

ART. 11. He shall be punished by a fine of fifty pesos gold, in favor of the Treasury:

1) That, without due authorization, uses in a mark of manufacture the coat of arms, heraldic insignia, or public or official insignia, national or foreign;

2) That shall use marks of manufacture that offend public decorum;

3) That shall use a mark of manufacture with indications of a locality or establishment not that of the place of origin of the merchandise or product, whether to this indication is united or not the name of another or a fictitious one;

4) That sells or offers for sale any article of merchandise or product that bears marks such as indicated in numbers 1, 2, and 3 of this article, provided he can not prove its origin;

5) That shall use a mark of manufacture containing anything personally offensive, or who sells or offers for sale articles that display such marks.

ART. 12. Judicial action as a result of the offenses mentioned in the preceding article shall be started by the Government Attorney of the District where products are found displaying the aforesaid marks.

PARAGRAPH. The owner of the establishment falsely indicated, as well as any merchant or manufacturer engaged in the same business, shall possess the right to register a complaint against the infractors mentioned in number 3 of Art. 11.

Repetition

ART. 13. Repetition will be punished by the doubling of the fine.

PARAGRAPH. Repetition shall be said to exist when, against the same offender, judgment for a crime foreseen in the present law shall have been pronounced within the five preceding years.

Claims for Damages and Injuries

ART. 14. The above-mentioned fines do not exempt delinquents from the payment of damages and injuries to which the suit for claims instituted by the interested parties may give rise.

Actions for Determining Existence of False Marks
Sequestration

ART. 15. The person interested may demand:

1) That there be instituted an investigation or examination to determine the existence of false or imitation marks of manufacture or of goods that bear such marks;

2) The seizure or destruction of the false or imitation marks in the shops where they are manufactured or wherever they are found before being put into use;

3) The seizure and deposit of goods or products that bear marks similar to those denominated under numbers 1, 2, 3, 4, 5, and 6 of Art. 6.

Guarantee for Payment of Fines and Indemnification

ART. 16. Seized articles shall serve as a guaranty of the payment of the fine and the indemnification due the interested party, and, to that end, after the destruction of their marks, they shall be sold at public auction during the hearing or lawsuit if they are liable to damage or deterioration, or, during the execution, an exception being made of those products that are harmful to public health, which shall be destroyed.

Basis of Action

ART. 17. The seizure or attachment of falsified products that display a false mark or a legitimate one used fraudulently, shall constitute the basis for the action.

Authority for Petitioning, Seizure or Attachment

ART. 18. Attachment or seizure shall be brought about on petition:

1) Of the party concerned;

2) Of the Government Attorney of the District where the falsified goods or products are found;

3) Of the Tax Collectors, provided that falsified articles are found in the establishments visited by them, and by any authority that, upon search, shall find falsified marks or articles.

Sequestration on Initiative of Authorities

ART. 19. When the seizure is brought about by the accusation of some authority, the owners of the marks or their representatives shall be notified to the end that they may begin action against the responsible parties, a period of thirty days being granted them for this purpose, under pain of the annulment of the seizure in favor of the party interested.

Competent Jurisdiction

ART. 20. The appropriate court for the hearings of the law suits referred to by this law is that of the place of residence of the defendant or that of the place where the goods showing

false or imitation marks or a legitimate mark illegally used are found.

Benefits Accorded to Foreigners

ART. 21. Foreigners and nationals whose establishments are located without the Republic shall enjoy the benefits of this law if it be permitted by reciprocal diplomatic agreements celebrated between the Dominican Government and that of the place of the establishments.

ART. 22. The guaranties and obligations contained in this law shall be applicable to marks registered previous to it.

ART. 23. This law annuls that part of any other that may be contrary to it.

MILITARY GOVERNOR OF DOMINICAN REPUBLIC

DEPARTMENT OF INDUSTRY AND COMMUNICATIONS

ORDER NO. 12

WHEREAS: For the better fulfillment of the law of marks of manufacture and of commerce it is expedient to regulate the execution of some of their provisions; and

It is likewise necessary to give to registered marks all guarantees to which they are entitled, so as to render difficult the falsifications or imitations to which they may be subject,

BE IT RESOLVED THAT:

1) Each mark of manufacture or of commerce shall imply a separate registration, it not being possible, in consequence, to apply for the registration of two or more in the same application, even when the owner is identical. Accordingly, each registration shall imply, likewise, the issuance of the corresponding certificate of ownership.

2) The transfer or assignment of a registered mark shall be entered, in the cases provided for in Art. 9 of the law, on petition in writing of the owner thereof. When it be not this one that solicits the entry of the transfer, the party interested shall include, in the special petition that he shall present, an authentic document that shall accredit the assignment of the rights inherent to the first proprietor.

3) In order that the successors of an owner of a mark, in which there figures the name or firm of the prior owner, may continue using it as registered, the requisite is indispensable to have the assignment entered, on petition in writing; this act will be verified by taking due note in the Register and upon the corresponding certificate.

4) It is permitted to the proprietor of a mark to introduce therein slight modifications of detail that do not alter the ensemble of the same, for example, the addition of medals and awards obtained, etc., provided that no modification will be permitted which would contribute to the mark thus modified being confused with another registered.

5) It shall be obligatory, for whoever desires to effect the modifications of which the preceding clause treats, to present, along with the respective application, two copies of the modified mark.

6) The modifications to which the preceding clauses refer carry with them the annulment of the first registration; it being provided that marks that have been the object of modification shall not be considered as registered save for the unexpired term of the first registration.

7) There may not be altered a name or firm registered as part of a mark, without the alteration being registered and published. Alterations of this order that are made without registration shall entail avoidance thereof.

8) In addition to the prohibitions established by Art. 6 of the trade mark law, there shall be prohibited the registration of marks that contain: letters, words, names, or distinctives that the State uses or might use; and there may not be registered as trade marks: the form or the color that the manufacturer shall have given to his product or to the receptacles that contain it; terms or locutions that are in general use; designations that ordinarily are employed for distinguishing the nature of the products or the class to which they pertain; geographic names, when by themselves they constitute the mark.

9) When course cannot be given to an application for registration of a mark due to there not being included the documents required for this purpose, priority shall be established, for the ends of Art. 7 of the law in the matter, counting from the date on which said documents are regularly presented.

10) Only the possessors of a certificate of ownership of a mark registered by the Department of Industry shall have the right to use the denomination "Marca Registrada" or the equivalent initials "M. R." on the mark to which the certificate refers. Those that, without such requisite, shall use said denomination or initials, shall be subject to Arts. 11 and 13 of the trade mark law.

11) In consideration of the fact that there do not exist the members of the Council of Industry of which the final paragraph of article 6 of the law in the matter speaks, the examination or comparison of marks presented for registration that

imitate totally or partially other marks registered, affixed to products of the same class, shall be subject to the examination and sole decision of the Secretary of Industry.

12) The expenses for stamped paper and those for the certificate of registration shall devolve upon the party interested.

Given at Santo Domingo, capital of the Dominican Republic, on November 30, 1917.

(Signed) C. C. Baughman,
Lieutenant, U. S. Navy,
For the Military Government.

DUTCH INDIES

The trade mark law of the Dutch Indies is the same as that of Curação, which see.

EAST AFRICA PROTECTORATE

TRADE MARKS ORDINANCE NO. 17 OF [OCTOBER 16] 1912

Short Title and Commencement

1. This Ordinance may be cited as "The Registration of Trade Marks Ordinance, 1912," and shall come into operation, for the purpose of making rules and prescribing forms and fees, on the publication of the Ordinance; and, for all other purposes, on such date as the Governor, by notice in the "Gazette," shall determine.

PART I

DEFINITIONS

2. In and for the purposes of this Ordinance (unless the context otherwise requires):—

"Marks" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

"Trade Mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

"Registrable Trade Mark" shall mean a trade mark which is capable of registration under the provisions of this Ordinance:

"Register" shall mean the register of trade marks kept under the provisions of this Ordinance:

"Registered Trade Mark" shall mean a trade mark which is actually upon the register:

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of Court; and, in other cases, prescribed by this Ordinance or the Rules thereunder:

"Court" shall mean His Majesty's High Court for East Africa:

"Person" includes a body corporate:

"Goods" shall mean anything which is the subject of trade, manufacture, or merchandise.

REGISTER OF TRADE MARKS

3. There shall be kept at the Office of the Secretary under the Inventions and Designs Act 1888 (Act V of 1888) for the

purposes of this Ordinance a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, the dates on which applications were made for their registration, as hereinafter provided, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the aforesaid Secretary, who is in this Ordinance referred to as the Registrar.

Trust not to be entered in register

4. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and extract from register

5. The register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance or to such regulations as may be prescribed; and certified copies of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Particularity

6. A Trade Mark must be registered in respect of particular goods or classes of goods.

The applicant shall, in his application, state goods included in one class only. If the applicant desires to register the same mark for goods falling in more than one class, he shall make a separate application in respect of each class and each of such applications shall be treated for all purposes as a separate and distinct application and the entries on the register in pursuance of such applications shall for all purposes, be deemed to relate to separate and distinct trade marks.

Essentials

7. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark:

For the purposes of this Section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Provided always that any mark which has been registered as a distinctive mark in the United Kingdom under the Trade Marks Act 1905, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Coloured trade marks

8. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any Tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration

9. (1) It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered for any goods set forth and included in classes 23, 24, and 25* of the third part of the Schedule hereto unless such trade mark has been and is registered in the United Kingdom in respect of such goods.

REGISTRATION OF TRADE MARKS

Application to register

10. (1) Any person claiming to be the proprietor of a trade mark may by himself or his agent apply to the Registrar for the registration thereof.

(2) The application must be made in the prescribed form, and must be accompanied by not less than three representations

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* Class 23 (*a*). Cotton yarn; (*b*) sewing cotton;
Class 24. Cotton piece goods of all kinds;
Class 25. Cotton goods not included in Classes 23, 24, or 38.
Article 38 covers "articles of clothing".

of the trade mark and by a stereotype block of such representation.

(3) The applicant must state the particular goods or classes of goods in connection with which he desires his trade mark to be registered.

(4) The application must be left with or sent by post to the Registrar.

(5) The date of the delivery or receipt of the application shall be endorsed thereon and recorded in the Registrar's Office.

(6) When an applicant for the registration of a trade mark or an agent does not reside or carry on business in the Protectorate he shall give the Registrar an address for service in the Protectorate and if he fails to do so the Registrar may refuse to proceed with the application until the address has been given.

Action in regard to application

11. (1) Subject to the provisions of this Ordinance the Registrar may refuse such application as aforesaid, or may accept it absolutely or subject to conditions, amendments or modifications.

(2) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(3) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

Advertisement of application

12. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the "Official Gazette." Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition of registration

13. (1) Any person may, within three months, or such further time, not exceeding nine months in all as the Registrar shall allow from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

Notice

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

Counter-statement

(3) The Registrar shall send a copy of such notice to the applicant, and within one month after the receipt of such notice, or such further time, not exceeding three months in all, as the Registrar may allow, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

Copy of counter-statement to party opposing

(4) If the applicant send such counter-statement, the Registrar shall furnish a copy thereof to any person giving notice of opposition, and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition, and if such security is not givin within fourteen days after such requirement was made or such further time as the Registrar may allow, the opposition shall be deemed to be withdrawn.

(5) If the person who gave notice of opposition duly gives such security as aforesaid, the Registrar shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the Court.

(6) Where the opponent is out of the Protectorate he shall, with notice of opposition to registration, give the Registrar an address for service in the Protectorate.

Cases how brought before the Court

14. (1) When a case stands for the determination of the Court under the provisions of the last preceding Section, the Registrar shall require the applicant to make a written application to the Court for an order that, notwithstanding the opposition of which notice has been given, the registration of the trade mark be proceeded with by the Registrar, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

(2) The applicant shall thereupon make his application or take such other proceedings as aforesaid, within the period of one month or such further time as the Registrar may allow, and shall also within the like period give notice thereof to the Registrar.

(3) If the applicant shall fail to make such application or to take such other proceedings of which failure the non-receipt

by the Registrar of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Powers of the Court

15. (1) The Court shall have power in proceedings under the last two preceding Sections to award to any party such costs as it may consider reasonable and to direct how and by what parties they are to be paid.

(2) The Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(3) The Court may permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the "Official Gazette" before being registered.

Disclaimers

16. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration

17. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this ordinance to be the date of registration.

Certificate of registration

18. The Registrar shall have a seal and on the registration of a trade mark he shall issue to the applicant a certificate in

the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Non-completion of registration

19. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant or to his agent (if any), treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS

20. Except by order of the Court or in the case of trade marks in use before the coming into operation of this Ordinance, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

21. Where each of several persons claims to be proprietor of the same trade mark or of nearly identical trade marks, in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him.

Concurrent user

22. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper to do so, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise as it may think it right to impose.

ASSIGNMENT

Assignment and transmission of trade marks

23. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

Apportionment of marks on dissolution of partnership

24. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass

to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks,) on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this Section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

25. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks

26. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

27. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of:—

(a) Statements of the goods for which they are respectively used or proposed to be used; or

(b) Statements of number, price, quality, or names of places; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) Colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks

28. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity as an equivalent for such user.

DURATION AND RENEWAL OF REGISTRATION

Duration of registration

29. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of registration

30. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed, "the expiration of the last registration."

Procedure on expiry of period of registration

31. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark

32. Where a Trade Mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF APPLICATION OR OF THE REGISTER

Registrar may correct formal errors in application

33. The Registrar may, on request in writing accompanied by the prescribed fee,

(a) correct any clerical error in or in connection with an application for the registration of a trade mark, or

(b) permit an applicant for registration of a trade mark to amend his application upon such terms as he may think fit.

Correction of register

34. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name:—

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or descriptions of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this Section shall be subject to appeal to the Court.

Registration of assignments, &c.

35. Subject to the provisions of this Ordinance where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this Section shall be subject to appeal to the Court.

Alteration of registered trade mark

36. (1) The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit; but any such refusal or conditional permission shall be subject to appeal to the Court.

(2) If leave be granted, the trade mark as altered shall be advertised in the prescribed manner, and the Registrar shall on

payment of the prescribed fee, cause the registrar to be altered in conformity with the order of leave.

Rectification of register by the Court

37. (1) The Court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from the register kept under this Ordinance or by any entry made without sufficient cause in the register, or by any entry wrongfully remaining on the register, or by any error or defect in any entry in the register make such order for making, expunging, or varying the entry as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may in any proceedings under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(4) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(5) If any order of the Court rectifying the register is made the Registrar shall on proof thereof and on payment of the prescribed fee cause the register to be altered in conformity with such order.

Non-user of trade mark

38. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods, and there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of registered proprietor

39. Subject to the provisions of this Ordinance:

(1) The person for the time being entered in the register as proprietor of the trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

40. Subject to the provisions of section 42 of this Ordinance and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered:

More than one proprietor

Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration prima facie evidence of validity

41. In all legal proceedings relating to a registered trade mark (including applications under section 37 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration conclusive after 7 years

42. In all legal proceedings relating to a registered trade mark (including applications under section 37 of this Ordinance) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Ordinance, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 9 of this Ordinance.

Provided that nothing in this Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon

or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section 22 of this Ordinance.

Unregistered trade mark

No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the coming into operation of this Ordinance, and has been refused registration under this Ordinance. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement

44. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade, in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of name, address or description of goods

45. No registration under this Ordinance shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods.

"Passing off" action

46. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of validity

47. In any legal proceedings in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in

such subsequent proceeding the Court certifies that he ought not to have the same.

Procedure before the Court

48. Every application made to the Court under Section 36 or 37 and all proceedings thereunder shall be conducted in such manner as the Court may direct.

COSTS

49. In all proceedings before the Court under this Ordinance the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Certified copies to be evidence

50. Printed or written copies or extracts purporting to be certified by the Registrar, of or from any document, register, and other books filed or kept under this Ordinance, in his office shall be admitted in evidence in all Courts in the Protectorate, and in all proceedings, without further proof of production of the originals.

Certificate of Registrar to be evidence

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Ordinance, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Application may be sent by post

52. (1) An application, notice or other document authorised or required to be left with, made or given to the Registrar or to any other person under this Ordinance, may be sent by a registered letter through the post, and if so sent shall be deemed to have been so left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and registered at the Post Office.

DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of discretionary powers of Registrar

53. Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the Trade Mark in question without (if duly required so to do within the prescribed

time) giving such applicant or registered proprietor an opportunity of being heard.

PART II

Power to Make Rules as to Fees, &c.

Power to make rules

54. (1) The Governor in Council may from time to time make, alter, or revoke rules, prescribe such forms, and generally to do such things as he thinks expedient subject to the provisions of this Ordinance:—

(a) for regulating the practice of registration under this Ordinance;

(b) for classifying goods for the purposes of registration of trade marks;

(c) for prescribing the fees payable in respect of applications and registrations and other matters under the Ordinance, and the mode of payment of the same;

(d) generally for regulating all the things by the said Ordinance placed under the direction or control of the Registrar;

(e) for altering or revoking the provisions contained in the Schedules hereto.

(2) Any rules made in pursuance of this section shall be published in the "Gazette" and shall come into operation on the publication thereof, subject to disallowance by His Majesty.

(3) Unless and until they be altered or revoked under this section the provisions contained in the schedule hereto shall be and remain in force.

Special Trade Mark

Standardization, etc., of trade mark

55. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Governor may, if he judge it to be to the public advantage, direct the Registrar to permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor.

TRADE MARKS REGISTERED IN GREAT BRITAIN

56. (1) Any person who has registered a trade mark in the United Kingdom shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall have the same date as the application for registration in the United Kingdom; provided that his application is made within four months from his applying for protection in the United Kingdom.

Provided that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of actual registration of his trade mark in the Protectorate.

(2) The use in the Protectorate during the period aforesaid of the trade mark shall not invalidate the registration of his trade mark.

(3) The application for the registration of a trade mark under this Section must be made in the same manner as an ordinary application under this Ordinance. Provided that any trade mark the registration of which has been only obtained in the United Kingdom may be registered under this Ordinance.

OFFENCES

57. (1) If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be guilty of an offence and on conviction shall be liable to imprisonment of either description for a term not exceeding five years.

(2) Any person who represents any trade mark as registered, which is not so, shall be guilty of an offence, and liable on conviction to a fine not exceeding seventy-five rupees.

A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

(3) If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family uses in connection with any trade, business, calling, or profession any device, em-

blem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and liable on conviction to a fine not exceeding three hundred rupees: Provided that nothing in this Sub-section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS

International arrangements—Priority registration

58. (1) If His Majesty is pleased by Order-in-Council to apply the provisions of section 91 of the Imperial Act entitled "The Patents and Designs Act, 1907,"* to the Protectorate, then any person who has applied for the protection for any trade mark in any foreign State with the Government of which His Majesty has made an arrangement under the said Section for mutual protection to trade marks, shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall take effect from the same date as the date of the application in such foreign State.

(2) Every application for the registration of a trade mark under this Section shall be made within four months from the date of the application for protection in such foreign State.

(3) Nothing in this Section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Protectorate.

(4) The use in the Protectorate during the period aforesaid of the trade mark shall not invalidate the registration thereof.

(5) The application for the registration of a trade mark under this section shall be made in the same manner as an ordinary application under this Ordinance. Provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(6) The provisions of this Section shall apply only in the case of those foreign States with respect to which His Majesty shall from time to time by Order-in-Council declare the provision of the aforesaid Section 91 of the Patents and Designs Act, 1907, to be applicable, and so long only in the case of each State as such Order continues in force with respect to that State.

Intercolonial arrangements

59. (1) Whenever it appears to the Governor in Council

* See Great Britain: Patents and Designs Act, 1907, Sec. 91.

that the Legislature of any British Possession or Protectorate has made satisfactory provision for the protection in such Possession or Protectorate of trade marks registered in the Protectorate, the Governor may by Order apply all or any of the provisions of the last preceding Section of this Ordinance with such variations or additions as may seem fit to trade marks registered in such British Possession or Protectorate.

(2) An Order-in-Council under this Section shall, from a date to be mentioned in the Order, take effect as if its provisions had been contained in this Ordinance, but the Governor in Council may revoke such Order.

GENERAL

Provisions as to public holidays

60. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document with, or paying any fee to the Registrar, shall fall on a Sunday or public holiday, it shall be lawful to leave such document or to pay such fee on the day next following such Sunday or public holiday or holidays if two or more of them occur consecutively.

Infants, lunatics, &c.

61. If any person is, by reason of infancy, lunacy or other disability, incapable of making any affidavit or doing anything required or permitted by this Ordinance or by any rules made under the authority of this Ordinance, then the guardian of such incapable person, or if there be none, any person appointed by any Court possessing jurisdiction in respect of the property of incapable persons upon the petition of any person on behalf of such incapable person, or any other person interested in the making of such affidavit or doing such thing, may make such affidavit, or an affidavit as nearly corresponding thereto as circumstances may permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall, for the purposes of this Ordinance, be as effectual as if done by the person for which he is substituted.

Powers of Customs authorities to detain goods in certain cases

62. Any person who has duly registered his trade mark in respect of any goods in Great Britain may by himself, his agent or representative in the Protectorate on giving notice in writing to the Chief of Customs that goods bearing a mark so nearly resembling his trade mark as to be well calculated to deceive are being imported into the Protectorate, cause the said goods to be detained by the Chief of Customs until the rights of the matter have been determined according to law. Provided that any such informant shall reimburse to the Chief of Customs all

expenses and damages incurred in respect of such detention made on his information, and of any proceedings consequent on such detention. And provided further that the Chief of Customs may refuse to detain any such goods as aforesaid unless and until the informant shall give a guarantee with sureties to be approved by the Chief of Customs for the due payment of such expenses and damages.

ECUADOR

LAW OF OCTOBER 28, 1908, AS AMENDED SEPTEMBER 14, 1914

CHAPTER I

Introductory

Article 1. A trade mark is any sign, emblem, word, phrase, or special and characteristic designation used to distinguish articles and to denote their origin.

Art. 2. An article is any industrial product.

Art. 3. Any person, natural or legal, native or foreign, has the right to distinguish his articles by means of a mark and to register it in accordance with this law.

Art. 4. Trade marks are domestic or foreign:

They are domestic when they are used on articles produced in the Republic; and

They are foreign when they are used on articles produced outside of the Republic;

Domestic trade marks, as well as foreign trade marks, are subject to the provisions of this law and enjoy the same rights.

Art. 5. A trade mark may consist in anything which is not prohibited by this law, and which serves to distinguish some articles from others identical or similar but of different origin.

Art. 6. The following may not be registered as trade marks:

1) Letters, words, names, coats of arms, emblems or insignia that are used by the Nation or its municipalities or even foreign States or cities;

2) Immoral expressions or representations;

3) The name of a person, natural or legal, unless it is presented in a peculiar and distinctive form;

4) A mark similar to one already registered or used by another, if it is intended for articles of the same nature; and

5) The name or portrait of a person without his consent, or that of his heirs if he be deceased.

CHAPTER II

The Use and Ownership of a Mark

Art. 7. The use and registration of a mark is optional, but it shall be obligatory when the public welfare requires it.

Art. 8. A trade mark can be used on the article itself or on the wrappers or packages that contain it.

Art. 9. He is the owner of a mark who first has made use

of same to distinguish his articles, but the mark shall not enjoy the rights and guarantees granted by this law if it has not been registered.

ART. 10. The ownership of a mark consists in the right to use it exclusively for the articles for which it is intended.

If the mark is national and not used within the year in which it was granted, it shall lapse.

If the mark is foreign, the importation of the article into Ecuador is not necessary.

ART. 11. A mark may be inherited or transferred.

ART. 12. A mark may only be transferred in connection with the industry to which the article belongs for which it is intended; and the sale of the industry shall comprehend that of the mark, in the absence of stipulation to the contrary. Every transfer of a registered mark shall be recorded in the Register; unless this is done, it shall have no effect.

CHAPTER III

REGISTRATION AND INSCRIPTION

ART. 13. The registration of marks shall continue under the direction of the Minister of Finance.

ART. 14. The registration of a mark may be applied for in person or through an attorney with power of attorney granted by public instrument.

ART. 15. The application for registration shall be presented to the Minister of Finance.

The application shall be accompanied by:

1) A power of attorney if the applicant appears by attorney;

2) Twenty facsimiles of the mark;

3) An electrotype of the mark. The length and breadth of the electrotype shall not be less than 15 mm. or more than 100 mm., and its height shall be from 20 to 30 mm. When a trade mark is made up of several separate parts, an electrotype of each one of them shall be sent;

4) A receipt from the Public Treasury by which is shown the payment of the fees prescribed in this law;

5) A consent in writing in the case mentioned in section 8 of Art. 6. This consent shall not be necessary when the mark in question is a foreign one duly registered in the country of its origin. Neither shall it be necessary for the renewal of a mark already registered according to this law.

ART. 16. In the application there shall be stated:

1) The name and domicile of the owner of the mark;

2) A detailed specification or description of the mark, de-

termining what is claimed as its essential particulars;

3) The article or articles for which the mark is intended;

4) The nationality of the mark;

5) The country and city, or place, in which the article is manufactured.

ART. 17. The application having been presented, the Subsecretary of the Ministry shall note the day and the hour in which it is received, shall number and rubricate each sheet, and shall bring it to the attention of the Minister within three days. If he does not bring it to his attention within that time, a fine shall be imposed upon him of twenty sucres for each day of delay.

ART. 18. If the application be according to Arts. 15 and 16, and if the mark be not in conflict with Art. 6, the Minister shall order that the facsimile of the mark be published twelve times, seven days at least intervening between each two publications. In addition, at the bottom of the facsimile, in synthetic form, a statement concerning the application shall be made.

Said publication shall be made on delivery of the receipt of the Fiscal Treasury, by which is evidenced that the fees prescribed by law have been paid.

ART. 19. If any person shall allege that the mark that it is desired to register belongs to him because of his having registered and used it previously, or that the mark conflicts with Art. 6, he may oppose its registration. In this case the Minister shall send the exhibits to some one of the Cantonal Judges of the Capital of the Republic in order that the dispute may be judicially decided in ordinary procedure.

ART. 20. The application having been published and the period of publication elapsed, if there has been no opposition, the Minister shall order the registration of the mark.

ART. 21. Whoever may believe himself injured may apply for the cancellation of the registration, if registration has taken place; but this action shall become outlawed in five years counting from date of registration. The case shall be tried in ordinary judicial proceedings.

ART. 22. In the actions foreseen in the preceding Arts. 19 and 21, if the decision is favorable to the plaintiff, the registration shall be annulled, or the application shall be rejected, in cases of opposition. In both actions he who loses shall be sentenced to pay damages and costs.

ART. 23. The owner of the mark shall pay twenty-five sucres for the right of registration or renewal; for the registration and certificate of transfer, ten sucres, and for each publica-

tion, one sucre.

ART. 24. It is not necessary that there precede the publication prescribed in Art. 18 for the renewal of a mark previously registered under this law.

ART. 25. In the same decree in which the Minister grants the registration, he shall order that the record be filed and the copies that the applicant may ask for be delivered. The Minister shall return to the applicant one of the copies of the mark with notation.

ART. 26. The decree of registration shall be transcribed literally in the Register, the date thereof being thus determined. The Sub-secretary shall certify that it is a copy of the decree issued by the Minister and shall indicate the number of the record in which the original proceedings are to be found.

ART. 27. The effects of the registration shall count from the date on which it was applied for.

ART. 28. The Register shall be made up each year, consisting of the registrations that have been effected between January 1 and December 31.

Registrations shall be effected in sequence, without leaving more space between them than one line, and numbered according to the date of the decree in regard to registration.

At the end of each Register an alphabetical index shall be made of the applicants, stating the number of the registration and the page on which it is to be found.

The records shall also be numbered, and the numbering shall correspond with that of the registration.

ART. 29. The registration of a trade mark shall only remain in force for twenty years; this period having ended, it shall lapse unless its renewal is obtained in good time. Each renewal shall continue for fifteen years and shall entail the same fees as were paid for obtaining registration.

Any registration can be renewed before it lapses and after the fees prescribed by this law have been paid. The proper receipt having been presented to the Sub-secretary of the Ministry, he shall note the renewal of the mark upon the Register, and shall give a certificate to the interested party, or shall make a note of the renewal upon the copy mentioned in Art. 25.

ART. 30. The paper which shall be used for applications and decrees of registration shall be stamped paper of the fifth class.

ART. 31. The Sub-secretary of the Ministry must give, on the proper stamped paper and without requiring fees, the copies which may be asked for.

CHAPTER IV

Names, Insignia, Etc.

Art. 32. The name of a merchant or producer, that of a firm, or corporation, the sign or designation of a house or establishment that deals in certain articles or products, constitute property for the purposes of this law.

Art. 33. He who desires to carry on an industry, business or a branch already exploited by another person with the same name or with the same conventional designation, shall adopt a modification of such a nature that the latter name or designation shall be visibly distinct from that which the pre-existing house or establishment uses.

Art. 34. If the party injured by the use of a name does not bring action within the term of one year from the day on which another began to use it publicly, he shall lose his right to any action. This action shall be tried in ordinary judicial proceedings before the Cantonal Judge (Alcalde).

Art. 35. Joint stock companies shall have the same right to the name they bear as any private person, and are subject to the same limitations.

Art. 36. The right to the exclusive use of a name as property shall be extinguished with the business house that bears it or with the enterprise for which it was intended.

CHAPTER V

Penalties

Art. 37. There shall be punished with a fine of from five hundred to one thousand sucres and imprisonment of from six months to one year:

1) Those that imitate a genuine mark;

2) Those that sell or offer for sale, buy or have in their possession, imitation marks;

3) Those that sell or offer for sale, buy or have in their possession, genuine marks without the consent of the owner, which is presumed when there is protest on the part of the latter;

4) Those that make use of imitation marks, placing them on articles that they make or on merchandise in which they deal; which is presumed against him that has, sells, or offers for sale said merchandise thus marked;

5) Those that sell or retail merchandise that bears an imitation mark;

6) Those that use on the articles that they make, or on the merchandise in which they deal, marks that contain false indications in regard to the nature, quantity, quality, origin

and source of either one or the other; or that state falsely that they have been awarded orders, medals, diplomas or other distinctions in expositions or in any other manner;

7) Those that, without imitating a mark, detach or separate it from certain articles in order to apply it to others;

8) Those that place their name, that of their establishment, or any word or sign, upon a genuine mark;

9) Those that refill with spurious products receptacles with a mark belonging to another; those that refill them with products which do not correspond with the genuine product as stated in the mark borne by the vessel; those that mix genuine products that bear genuine marks with other products different or spurious; and those that sell, resell, or have in their possession, such products. This last is presumed if such products are found in their stores, warehouses, or shops.

ART. 38. The guilty parties shall be sentenced to pay costs and damages to the injured parties.

ART. 39. All imitation marks, with the exception of one, which shall be a part of the record, shall be destroyed by the Secretary in the presence of the Judge and two witnesses. This shall be done after the experts render their report, if in same they establish that they are imitations.

ART. 40. Articles that bear imitation marks shall be sold at public auction, provided that they are not harmful, in which case they shall be destroyed, and the proceeds shall be divided in equal parts between the Treasury and the informant. If the mark was used on the article, the former shall first be destroyed.

ART. 41. It is presumed that an article is offered for sale, if it is held in a warehouse, store or shop.

ART. 42. An imitation mark is one not registered, the same as or similar to one registered. There is similarity when both marks have one or more similar essential particulars, or when they may be confused at first sight, and when only by means of a careful examination it is possible to distinguish one from the other.

CHAPTER VI

PROCEDURE

ART. 43. The infractions mentioned in this law may be officially prosecuted.

ART. 44. The *corpus delicti* is established by the report of the experts, if they determine that there is imitation. There shall be two experts, named by the parties; and, as regards the recusation, there shall be observed the provisions of the Code of Procedure in Civil Matters.

ART. 45. The persons accused, if there are against them any of the presumptions established in this law, shall be immediately committed to prison, unless they give bail of five thousand sucres, and the goods shall be deposited with a responsible person until the termination of the proceedings.

ART. 46. The Minister of Finance shall send to each customs officer a copy of the registration of each foreign mark that has been or shall be registered, with a facsimile of said mark.

ART. 47. When an attempt is made to import merchandise with imitation marks, the customs officer shall place them at the disposition of any Justice of the Peace, as well as the invoices, manifests and other documents that refer to them.

The omission of this duty will make him responsible for complicity in the offence, without prejudice to a fine of five hundred sucres, which the Minister of Finance shall impose upon him.

ART. 48. Every machine or instrument intended for the counterfeiting of marks shall be confiscated.

ART. 49. Registrations effected up to the date on which this law is decreed shall remain in force for twenty years, counting from that date, and shall enjoy during that period the benefits prescribed by this law, and shall be subject to the limitations of the same. Said registrations should be renewed at the expiration of the twenty years to which this article refers.

EGYPT

No trade mark law.

Trade marks may be registered at the Mixed Courts at Cairo, Alexandria and Mansourah.

Infringements are prosecuted under the common law.

ERITREA

ROYAL DECREE OF DECEMBER 5, 1907

ARTICLE 1. Whoever has acquired in Italy the right to the exclusive use of a trade mark according to the law of August 30, 1868 (No. 4577), shall have the right to protection of this mark in the territory of the Colony of Eritrea through the administrative and judicial authorities, in accordance with the present provisions.

Merchants or manufacturers who have establishments in the Colony of Eritrea can obtain protection for the trade marks that they have adopted for their products or merchandise, by conforming to the present provisions.

ART. 2. In the application of the first paragraph of Art. 1 there shall be considered as commercial or manufacturing marks any denomination, name, or other sign that is applied to the products of an industry or the articles of a commercial enterprise for the purpose of distinguishing them from any other products or objects.

ART. 3. The mark must be different from those already legally employed by other persons and it must be registered in order that its exclusive use may be acquired.

ART. 4. The assignee or the industrial or commercial successor may preserve the right to the mark of its originator by immediately making declaration thereof in writing.

ART. 5. A merchant may not eliminate the distinctive mark or sign of the producer from his merchandise without the express consent of the latter; however, he may add thereto his own mark or the distinctive sign of his commercial enterprise.

ART. 6. Over and above the general interdiction as respects usurping the name or the style of a company or of an individual, it is also prohibited to appropriate the commercial name, or even the insignia of the enterprise, the characteristic emblem, the denomination or the title of an association or of a corporation, and to place it on shops, on the articles of industry or of commerce, or designs, engravings or other works of art, even when the said commercial name, the insignia, the emblem, the denomination or title do not constitute part of a distinctive mark or sign, or have not been registered in accordance with the law.

ART. 7. The Financial Administration of the State or of the Colony may adopt marks or signs to protect the products of its manufactures or the sale of products of exclusive monopoly,

by conforming to the provisions of the present law; and this without prejudice to the provisions in force, as regards the Administration of the State or of the Colony, of the laws concerning the production and the classification of these products.

ART. 8. Whoever shall wish to secure for himself in the Colony, the exclusive use of a distinctive mark or sign in the sense of Art. 2 and following, shall present at the competent Office of the Government:

a) Two fascimiles of the mark or of the distinctive sign that it is his intention to adopt;

b) A declaration, in duplicate, in which is expressed his desire to reserve the rights belonging to him, and in which shall be indicated the nature of the articles on which he desires to place the mark or the sign, declaring whether the mark or distinctive sign is to be placed on articles produced by him or on merchandise in which he deals;

c) A description, in duplicate, of the mark or distinctive sign;

d) A receipt for payment by him of forty lire as fee and costs for each mark or distinctive sign.

Successors or assignees shall pay a fee of two lire for the registration of the declaration prescribed by Art. 4.

ART. 9. As soon as it is found that the documents filed are in order, as far as concerns their extrinsic value, the Office of the Government shall inscribe upon the above mentioned declaration a memorandum indicating the day and the hour when these documents were filed; and it shall transmit to the Minister of Foreign Affairs an abstract of the declaration and of the description, to the end that they may be published in the *Gazzetta Ufficiale del Regno* of the Kingdom. A similar abstract shall be published in the *Bollettino Ufficiale* of the Colony.

One of the copies of the declaration with the certification of the date of its presentation and of the publication in the *Bollettino Ufficiale* shall be returned to the applicant, and also one copy of the mark and its description, provided with the endorsement of the Government.

The other copies of these documents, with the receipt mentioned under (d) of Art. 8, shall be retained by the Government and may be examined by anyone making a demand to that effect.

ART. 10. The certificate does not guarantee the importance and the validity of the mark or distinctive sign, or the quality or origin of the products, or the existence of other conditions requisite to the validity or efficacy of the exclusive right.

ART. 11. The right to make exclusive use of the mark or distinctive sign shall commence to exist, in favor of the decla-

rant, from the date of registration effected at the Office of the Government. But the effects of this right, in regard to fines and damages, are only produced upon the publication in the *Bollettino Ufficiale.*

ART. 12. There is prohibited the use of advertisements made by means of journals and prospectuses, circulars, public proclamations, and, in general, by any other means of publicity whatever, if by them is given, in regard to a certain merchandise, product or industrial service, false statements of fact calculated to give them a particular advantage or to obtain the favor of the public to the detriment of other similar products.

This prohibition relates to the use of false statements:

1) Of the nature of the merchandise or the service or industrial product;

2) Of the price;

3) Of the method and means of production;

4) Of the mines, shafts or sources whence the merchandise has been extracted, or any other similar indication;

5) Of the possession of patents or rewards of honor;

6) Of the reason for and the purpose of the sale.

There are also prohibited advertisements effected by the means indicated above, and any other communication by which are spread, for the purpose of competition, false statements calculated to cause damages to the establishment or the credit of a manufacturer or of a merchant.

ART. 13. It is forbidden to counterfeit or imitate the form, the color or the arbitrary designation which, for the purpose of distinguishing it, have been placed upon a product, upon its wrapper or upon the receptacles which contain it, so as to produce confusion with the products of the same person or with those of another.

ART. 14. Without prejudice to more severe penalties laid down by the penal code for acts which are here named, he shall be punished with a fine up to two thousand lire, even when the act has not been done to the prejudice of third parties:

1) Who violates the provisions of Arts. 5, 6, 7, 12 and 13 of the present law;

2) Who counterfeits a mark or distinctive sign and who knowingly makes use of same;

3) Who, without actually having counterfeited a mark or a distinctive sign, makes a fraudulent imitation of same, or who, knowingly makes use of a counterfeit or fraudulently imitated mark or sign;

4) Who, knowingly, places in circulation, sells or imports from abroad, and for commercial use, products bearing a fraud-

ulently counterfeited or imitated mark or sign;

5) Who knowingly makes use of a mark or sign, insignia or emblem, bearing false statements calculated to lead the purchaser into error regarding the nature of the product, or who sells products provided with such marks, signs or emblems.

In case of repeated offence the fine shall be from two hundred to four thousand lire. In any case it shall not be less than double the amount of the fine imposed for the preceding offence.

The counterfeit marks or signs, the instruments which have served for the fraud, as well as the products and articles bearing such counterfeit, shall be confiscated.

The altered marks or signs, insignia or emblems, shall be redintegrated at the expense of the delinquent party.

Art. 15. The above penalties shall be inflicted without prejudice to damages.

Whoever establishes his good faith in the acts named in Arts. 12 and 13 shall be exempt from the penalty.

The interested party may in any case, even in civil cases, have recourse to the judicial authority:

1) For the recovery of damages;

2) To enjoin the use of, the repetition of, or the later circulation of, false indications that injure him;

3) To enjoin the use of distinctive signs liable to cause confusion;

4) To obtain the publication of the judgment in the press.

Art. 17. In the proceedings to recover damages, the claimant may relinquish his right to prove the amount of the damage suffered, and rely, for pecuniary relief, upon the estimate of the magistrate.

Art. 18. Regulations approved by decree of the Governor of the Colony shall specially provide more detailed provisions, the summary publication of the certificates issued by the Government, and everything which shall be necessary for the execution of the present provisions.

ESTHONIA

LAW OF APRIL 15, 1921*

SECTION 124. There shall be considered as a trade mark any kind of mark that is affixed to merchandise or the wrappers or containers thereof by manufacturers or merchants for the purpose of distinguishing this merchandise from the wares of other merchants or manufacturers, for example: stamps, pyrographed marks, seals, capsules, textile marks (woven and embroidered), labels, vignettes, devices, signatures, wrappers, as well as the combination of individual letters and numbers, words, combinations of words, regardless of their form, representations of the original packages, etc.

SEC. 125. Manufacturers and merchants are entirely free in the choice of their trade marks, save those with reference to which there exist special legal provisions.

SEC. 126. There is prohibited the affixing of trade marks:

1) Containing legends or representations that are contrary to public order and to decorum;

2) Containing legends or representations that are manifestly false or are intended to deceive the buyer; and

3) Containing representations of distinctions of merit intended to be worn by the manufacturer or merchant, as well as representations of awards and diplomas of merit without mention of the year of their grant.

NOTE: Trade marks with representations of awards and diplomas of merit that are granted for certain goods may only be affixed to the corresponding merchandise.

SEC. 127. If a manufacturer or merchant desires to obtain the exclusive right to a certain trade mark, he must make application therefor at the Patent Office and receive from the latter a certificate, on payment of the fees stipulated. The corresponding petition must be filed either in person or through the intermediary of an attorney, together with the deposit of a description of the trade mark, a *cliché* (electrotype), ten facsimiles, and a receipt from the Treasury covering the payment of 300 marks for the defrayment of the costs of the examination. At the same time the manufacturer or merchant has to state

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* Law amendatory of Russian Trade Mark Law (Code of Laws, Vol. XI, Part 2, edition of 1913)—Russian Commercial Ordinance, Chapter V, Secs. 124-146 and Law Concerning Indirect Taxes, Chapter VI, Secs. 366-377.

for what kinds of goods and for what enterprise the trade mark is intended. If the owner of the trade mark resides abroad, then the petition is to be presented through the intermediary of an attorney resident in Esthonia.

NOTE: Trade marks of industrial and commercial enterprises domiciled abroad may be received by the Patent Office for registration, in accordance with this law, only in the case in which they are already legally protected in the State in which is located the enterprise of the owner, and that State grants legal protection also to Esthonian trade marks. The said marks shall be registered in the same form as abroad, for which purpose there must be presented documents in verification of the registration effected abroad.

SEC. 128. Manufacturers and merchants shall enjoy the exclusive right of use with reference to such trade marks, without the deposit prescribed in the foregoing section, insofar as they refer solely to the Christian and surnames of the owner or to the denomination and location of the enterprise, provided that they are not presented in a particular manner and way, for example, in the form of autographs, monograms, or in fantastic letters.

SEC. 129. (Repealed) .....

SEC. 130. A manufacturer or merchant is at liberty to petition several dissimilar trade marks for goods of divers kinds or sorts.

SEC. 131. The exclusive right to the use of a trade mark will not be granted if the latter:

1) Does not fulfill the requirements of Sec. 126;

2) If it differs too slightly from trade marks already registered for wares of the same class of other manufacturers or merchants;

3) If it is in common use for certain goods;

4) Contain the arms or other distinctives of this or foreign States, Cities, or even the name or portrait of any person without corresponding permission;

5) If it consists solely of individual ciphers or letters, or of words explaining the methods of production or use of certain goods, the time or place of production, their purpose, price, volume or weight.

SEC. 132. If the Patent Office has examined the trade mark filed and has found it in compliance with the stipulations of this law, it shall then grant to the owner of the mark a certificate for the protection of the exclusive use thereof. In the contrary case the trade mark is not allowed, and the grounds for rejection shall be given to the applicant for protection.

The applicant, dissatisfied with the decision of the Patent Office, may, during the course of three months, reckoned from the day of the issue of the decision, file an appeal to the Patent Office and, on presentation of a receipt from the National Treasury for 300 marks paid in, may petition for a review of the case by the Patent Appeal Board.

SEC. 133. The certificate of protection gives to those manufacturers or merchants in whose name it is issued the right for the term therein stipulated for the exclusive use of the trade mark applied for on goods, and he may affix the same upon his goods, packages, or containers of the goods, as well as on circulars, prices-current and business stationery. If the trade mark is intended only for a certain kind of goods, then the certificate of protection grants the right of exclusive use of the trade mark only for this class of merchandise.

SEC. 134. Certificates of protection for trade marks are issued on request of the applicant for from 1 to 10 years, reckoned from the day of their issue. On the expiration of the term the certificate of protection may be renewed.

SEC. 136. The certificate of protection shall be issued to the first applicant except if, during the examination procedure, petitions are filed at the Patent Office for the grant of exclusive enjoyment of the same trade mark.

SEC. 137. The grant of the certificate of protection for a trade mark, as well as the expiration of the certificate of protection, shall be published in the *Riigi Teataja*.

SEC. 138. The grant of a certificate of protection for a trade mark does not deprive others of the right of legally lodging claim to the ownership of the right to the exclusive use of the said mark, within three years from the publication of the certificate of protection.

SEC. 139. In case of the transfer or lease of an industrial or commercial enterprise, the right to the exclusive enjoyment of the trade mark that was granted to the previous owner is transferred to the new owner, this, however, only with the consent of the former owner; proof thereof is to be filed with the Patent Office within six months, counted from the date of the assignment or lease.

NOTE: The right to the exclusive use of a trade mark may be assigned to the new owner in the manner stipulated in this article, even on a partial assignment or lease, in case this part constitutes an independent branch and the mark to be assigned was intended for the goods of this production.

SEC. 140. The certificate of protection and the exclusive right of enjoyment of the trade mark shall expire:

1) On corresponding petition of the owner of the enterprise, or with the giving up of the latter;

2) In case the certificate of protection is not renewed within the prescribed term;

3) If the Patent Office is not notified within six months as regards the transfer or lease of the entire enterprise or a part of the same;

4) In case it is determined in accordance with law that the right to the exclusive enjoyment does not belong to the holder.

Sec. 141. In the cases mentioned in Sec. 140, Nos. 1 to 3, the right to the exclusive enjoyment of the trade mark may be granted anew to no one prior to the expiration of three years from the publication of the avoidance of the certificate of protection issued for this mark.

Sec. 142. The violation of the right to the exclusive enjoyment of the trade mark entails, without prejudice to damages and injuries for corresponding offenses, a penal responsibility in accordance with the stipulations that are contained in the Penal Code and in treaties and agreements concluded with foreign States.

Sec. 143. All trade marks granted for exclusive enjoyment shall be registered by the Patent Office in a special Register, and from these shall be prepared an album that shall be open for consultation by those interested.

Sec. 144. The Minister of Commerce and Industry is authorized to issue provisions concerning procedure with reference to the prescriptions contained in this Chapter V, of such nature that they will not conflict with these prescriptions, nor affect such matters as by their nature are dependent on the Courts or Legislative Departments. These regulatory stipulations are to be made known by the Council of State in the *Riigi Teataja.*

Sec. 145. Subjects or citizens of foreign States that have concluded an agreement with Esthonia for the reciprocal protection of industrial property on the basis of the right of priority, shall enjoy the right to obtain a certificate of protection to the same trade mark, as provided for in Sec. 127, to the extent that they have requested in one of these States protection in accordance with law, within four months from the filing of the above application.

Sec. 146. Those that are not citizens or subjects of such foreign States as have concluded an agreement with Esthonia for the reciprocal protection of industrial property on the basis of the right of priority, shall avail themselves of the advantages

foreseen in Secs. 86*, 145, and 157*, only in case this is particularly stipulated in the said agreements. In this case, the above named advantages are to be applied within the limits and subjects to the stipulations foreseen in this agreement.

. . . . . .

SEC. 366. .....Certificates of trade marks shall be subject to a fee corresponding to the duration of these..... certificates.

. . . . . .

SEC. 374. For each certificate of trade mark granted for the first time or renewed there shall be collected in favor of the State a tax of 300 marks for the first year of the duration of the certificate and 100 marks for each succeeding year.

SEC. 375. The taxes mentioned in the preceding Section (374) must be paid in on the filing of an application for the grant of a certificate for a trade mark, or for the renewal of such a certificate, in advance, for the entire term of the same.

SEC. 376. On petition for the transfer of the certificate of a trade mark, prior to the expiration of the same, to the new owner of the industrial or commercial enterprise, there shall be collected a fee of 300 marks.

SEC. 377. In case the petition for the grant, the renewal, or the transfer be decided adversely, then the deposited fee will be returned to the applicant after deduction of postal charges for the return of the money.

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* Secs. 86 and 157, referring respectively to patents and models and designs, are substantially the same as Sec. 145. The former grants a priority delay of 12 months and the latter, 4 months.

FALKLAND ISLANDS

PATENTS ORDINANCE OF FEBRUARY 25, 1903*

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To whom certificates of registration may be granted

2. A certificate of registration . . . of any trade mark may be granted in this Colony to any person who in the United Kingdom is the registered proprietor of such . . . trade mark or to any person to whom all interest in such . . . trade mark in respect of this Colony has been assigned.

Procedure

3. Every application for . . . the registration of a . . . trade mark under this Ordinance shall be addressed to the Colonial Secretary and there shall be transmitted with such application:

(1) Two copies of the . . . certificate of registration granted in England;

. . . . . .

(3) Two copies of any drawing in relation to the . . . trade mark;

(4) Two exact representations or specimens of the design;

(5) An affidavit that the applicant is the lawful owner of the . . . trade mark for which protection is asked or the assignee of the lawful owner in respect of this Colony;

(6) A fee of five pounds.

All applications to be filed and recorded

4. The Colonial Secretary shall file every such application and the enclosures thereto and cause to be entered in the books of record of the Register-General a note of the nature of the . . . trade mark and of the filing of the application and of the enclosures thereto.

Issue of certificates of registration

5. A certificate of the note as entered in the records shall thereupon be issued under the hand of the Governor and of the Colonial Secretary and under the seal of the Colony, and such certificate shall be the . . . certificate of the registration of the . . . trade mark, . . . and shall confer upon the lawful holder within the limits of this Colony every right, title and advantage which the holder . . . of the registration of a . . . trade mark has in England in respect of such . . . trade mark, provided that such certificate shall be null and void whenever the . . .

* Provisions not relating to trade marks are omitted.

certificate to which it refers shall finally cease in England.

Supreme Court to afford all relief

6. The Supreme Court shall have power, subject to the Patents, Designs, and Trade Marks Acts of England, for the time being, to grant, either absolutely or on such terms and conditions as shall seem just, all such remedies as either party may appear to be entitled to in respect of either claim to or defence of any right, title or interest in relation to any . . . registration in force in this Colony under a certificate granted under this Ordinance.

Short title

7. This Ordinance may be cited as the "Patents Ordinance, 1903."

FIJI ISLANDS

ORDINANCE NO. 1 OF [APRIL 22,] 1886

Short Title

1. This Ordinance may be cited for all purposes as "The Trade Marks Registration Ordinance, 1886."

Register of Trade Marks to be established

2. A Register of Trade Marks as defined by this Ordinance and of the proprietors thereof shall be established under the superintendence of the Registrar-General.

Commencement

3. From and after the first day of January, 1887, no proceedings to prevent the infringement of a trade mark as defined by this Ordinance shall be instituted by any person unless such trade mark is registered in accordance with the provisions of this Ordinance.

Characteristics of registered trade marks

4. A trade mark must be registered as belonging to particular goods or classes of goods and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill but subject as aforesaid the registration of a trade mark shall be deemed to be public use of such mark.

Title of first proprietor of a trade mark

5. The registration of a person as first proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of such trade mark and shall after the expiration of five years from the date of such registration be conclusive evidence of his right to the exclusive use of such trade mark subject to the provisions of this Ordinance as to its connection with the goodwill of a business.

Title of proprietor claiming by transmitted proprietorship

6. Every proprietor registered in respect of a trade mark subsequently to the first registered proprietor shall as respects his title to that trade mark stand in the same position as if his title were a continuation of the title of the first registered proprietor.

Rectification of register

7. If the name of any person who is not for the time being entitled to the exclusive use of a trade mark is entered on the Register of Trade Marks as a proprietor of such trade mark or if the Registrar refuses to enter on the register as proprietor

of a trade mark the name of any person who is for the time being entitled to the exclusive use of such trade mark, or if any mark is registered as a trade mark which is not authorised to be so registered under this Ordinance, any person aggrieved may apply in manner hereinafter prescribed for an order of the Court that the register may be rectified and the Court may either refuse such application or make an order for the rectification of the register and award damages to the party aggrieved.

Procedure where several claims for registration of same trade mark

8. Where each of several persons claims to be registered as the proprietor of the same trade mark, the Registrar may refuse to comply with the claims of any such person until their rights have been determined by the Court, and the Registrar may himself submit or require the claimants to submit their rights to the Court.

Power of Court to decide questions relating to registration of trade marks

9. The Court may in any proceeding under the last two preceding sections decide any question whether a mark is or is not such a trade mark as is authorised to be registered under this Ordinance, also any question relating to the right of any person who is party to such proceedings to have his name entered on the Register of Trade Marks or to have the name of some other person removed from such register, also any other question that it may be necessary or expedient to decide for the rectification of the register and may direct an issue to be tried for the decision of any question of fact which may require to be decided for the purposes of such rectification.

Orders of Court to be notified to Registrar

10. Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Restrictions on registry of trade marks

11. The Registrar shall not, without the leave of the Court, register in respect of the same goods or classes of goods a trade mark identical with one already registered with respect to such goods or classes of goods, and the Registrar shall not register with respect to the same goods or classes of goods a trade mark so nearly resembling a trade mark already registered with respect to such goods or classes of goods as to be calculated to deceive.

Certain marks not to be registered

12. The Registrar shall not register as part of or in com-

bination with a trade mark any words the exclusive use of which would not by reason of their being calculated to deceive or otherwise be entitled to protection in a Court of Equity or any scandalous designs.

General rules to be framed by Chief Justice

13. The Chief Justice may from time to time make and, when made, alter, annul or vary, as he may deem expedient, general rules:

(1) As to registration of trade marks;

(2) As to notices to be given by advertisement before the registration of trade marks;

(3) As to the classification of goods for the purposes of this Ordinance;

(4) As to the registration of first and subsequent proprietor of trade marks;

(5) As to the fees to be charged for registration;

(6) As to the continuance of a trade mark on the register or otherwise;

(7) As to the removal from the register of any trade mark;

(8) As to the persons entitled to inspect the register;

(9) As to any proceedings to be taken to obtain the judgment or leave of the Court;

(10) Generally for the purpose of carrying into effect this Ordinance.

Rules to be approved by Legislative Council

14. Any rules made under the authority of the last preceding section shall be laid before the Legislative Council and every rule when approved by the Council shall have the same force and effect as if it had been embodied in this Ordinance.

Definitions of trade mark

15. For the purposes of this Ordinance a trade mark consists of one or more of the following essential particulars (that is to say):

(1) A name of an individual or firm printed, impressed or woven in some particular or distinctive manner; or

(2) A written signature or copy of a written signature of an individual or firm; or

(3) A distinctive device, mark, heading, label or ticket, and there may be added to any one or more of the said particulars any letters, words or figures or combination of letters, words or figures.

Registration of old trade marks

16. Any special or distinctive word or words or combination of letters or figures used as a trade mark before the pass-

ing of this Ordinance may be registered as such.

Interpretation

17. "Court" means the Supreme Court of Fiji or any Judge thereof.

FINLAND

LAW OF FEBRUARY 11, 1889

ARTICLE 1. Whoever manufactures or sells products in Finland shall have the right to acquire, through registration, in accordance with the following provisions, the exclusive right of using a special mark for the purpose of distinguishing his goods in general business from those of other persons.

This right shall be applicable to all kinds of goods, unless it shall have been, upon registration, confined to certain classes.

The mark shall be affixed to the product itself or to the containers or wrappings that hold it.

ART. 2. The Register of Marks shall be kept by the Bureau of Industry (*Industristyrelse*), which shall have published in the official journals of the country a representation of the registered trade mark, as well as a notice of the registration.

The expenses of registration and publication shall be 25 marks; they shall be paid by him who applies for registration.

ART. 3. All applications for the registration of marks shall be presented in writing at the Bureau of Industry, by the applicant or his attorney. However, the application may also be sent free to the said authorities by post. The application shall contain:

1) Complete statement, with name and Christian names, of the person or of the firm petitioning the deposit, as well as the profession, address and residence thereof;

2) In case the applicant only claims a right for protection of certain goods, statement of the same.

The application must be accompanied by:

Two copies of the mark printed upon strong paper, 15 centimetres in length by 10 in width;

Two electrotypes of the same dimensions as the above examples and serviceable for the reproduction of the mark;

The fee for registration named in the foregoing article.

If the registration of several marks is applied for, complete documents are to be filed for each mark.

ART. 4. No mark shall be registered:

1) If there has already been registered or filed for deposit an identical mark in the name of a third person, or even if the resemblance between the two marks is sufficient to produce confusion;

2) If the mark consists chiefly or exclusively of ciphers, characters, letters or words, unless by their peculiar form, or

by certain arrangements or additions, these signs constitute a figurative mark; or unless the words designate the name or the firm of the applicant or his property;

3) If the mark consists chiefly or exclusively of a sign or emblem generally employed in a certain line of trade;

4) If the mark contains illegally the name or firm of a third person, or even words that may be confounded with them;

5) If the mark contains statements that are offensive to morals, to public order, or scandalous, or if it is manifestly susceptible of inducing to error;

6) If the mark contains public arms, or the insignia of orders of chivalry.

ART. 5. The right to make use of a mark belongs to and follows the business concern for which it is used.

If a business is assigned to another, the said right passes from the assignor to the new proprietor, if it is not arranged that the former retains the right or that both may use the mark for different products or goods.

ART. 6. The protection of a registered trade mark shall cease if the renewal of the registration is not applied for at the Bureau of Industry before the expiration of ten years from the date of the registration, and subsequently before the expiration of each tenth year.

Whoever desires to renew the registration of a mark shall file a written application at the Bureau of Industry as specified in Art. 3, and add a reproduction of the described mark, as well as 10 marks as registration fee.

If the trade mark was registered for another than the one applying for a renewal, the applicant shall prove his right to the mark.

Renewals, if granted, shall be registered in the Trade Mark Register.

ART. 7. Whoever claims to have been injured by the registration of a mark shall have recourse in the ordinary courts to the end of obtaining cancellation thereof.

ART. 8. When a registration has been annulled, or the term of protection for a registered trade mark has expired, or the proprietor of a registered mark renounces protection, the mark shall be removed from the Register and a notice thereof shall be published in the official journals of the country.

ART. 9. Any merchant of a foreign country in which Finnish citizens enjoy corresponding favors may, by complying with the laws in force in the Grand Duchy, obtain protection by registration for his mark which he has duly deposited in his country.

However, this trade mark will not be protected on a larger scale nor for a longer time than in the native country of the proprietor of the mark.

If the registration of a foreign mark is applied for, the applicant must furnish the Bureau of Industry, beside the pieces for application defined in Art. 3, and the prescribed fee, an authentic certificate establishing that the applicant has fulfilled in his native country the conditions prescribed for the obtention of the protection of the trade mark; in addition, he must indicate the name of an attorney residing in the Grand Duchy, who will be able to represent him in all matters relative to the mark.

ART. 10. Whoever illegally and with fraudulent intent shall affix to a product placed on sale the mark of a third party protected in accordance with the present law, and whoever puts on sale or in circulation a product that he knows to be fraudulently provided with such a mark, shall be amenable to a fine of from 50 to 1,000 marks, or to imprisonment of one year at most; he shall be bound, in addition, to fully indemnify the injured party.

The importation of all products bearing a native mark deposited in the Grand Duchy is prohibited, unless the owner of the mark expressly consents thereto.

In the case in which such an importation shall have been made, the delinquent shall be amenable to the penalties provided for in the case of illicit importation, and the goods thus imported shall be sequestered whether the owner be known or not.

Any mark illegally affixed to a product that is found in the possession of the authority that has seized it, or of the condemned party, shall be effaced.

In case of impossibility of effacing the mark the products shall be destroyed.

The dispositions of this article shall be likewise applicable in the case in which a product is provided intentionally with a mark having, with a mark already deposited in the name of a third person, a similitude such that confusion may easily be produced.

ART. 11. The present law implies no amendment to the regulations in force prescribing that the proprietors of blast furnaces or other metallurgic mills are to announce their marks to the competent authorities, and to apply them to their products.

These marks are to be considered as marks of manufacture in the sense of the present ordinance so that the regulations concerning the deposit of marks shall be equally applicable to this class of marks.

The marks mentioned in this paragraph, duly adopted and

existing at the moment of the entry into force of the present ordinance, shall be, without any notice and exempt from every fee, recorded in the Register of Marks under the care of the Bureau of Industry, with obligation by this Administration to have published a notice of the registration in the official journals of the country. The renewal of the last-named registration shall be made without special announcement by the Bureau of Industry.

ART. 12. If a merchant has already legally used a mark otherwise than under the conditions indicated in the preceding article, and has presented it for registration within the six months that follow the coming into force of the present law, and if an identical mark has been presented for deposit and registered in the name of a third person, this latter mark shall be cancelled through the medium of the Bureau of Industry, and notice thereof shall be published in the official journals.

A mark enjoying the right of priority in conformity with the present article may be registered such as it is for the same line of business, unless it falls under the application of paragraphs 3, 4, 5 and 6 of Art. 4.

ART. 13. Every litigation concerning a domestic mark shall be subject to the jurisdiction of the court of the district in which the accused has his chief business, and, as regards foreign trade marks, by the Court at Helsingfors.

ART. 14. Fines which are imposed according to this law shall be collected for the benefit of the Crown; in case of inability to pay the fine entirely, it will be changed as prescribed by law.

ART. 15. Whoever is not satisfied with the decision of the Bureau of Industry in matters pertaining to trade marks may appeal to the Administrative Department of the Senate within the time allowed for availing one's self of rights against decisions of the Bureau of Industry.

ART. 16. The regulations concerning assay marks and the marks of manufacturers stamped upon products of gold and silver, as well as stamps of weights and measures and playing cards, shall remain in force.

ART. 17. The Administrative Department of the Senate shall make special such regulations as are necessary with reference to the registration of marks and to the applications of the prescriptions of the present ordinance.

ART. 18. This law is to become effective on May 1, 1889, and counting from this date the dispositions of the first chapter, paragraph 11, of the Handels-Balken shall be abrogated, as well

as those of the law of March 31, 1879, regarding commerce and industry, which fix penalties in case of the illicit use of marks of manufacture.

FRANCE

LAW OF JUNE 23, 1857, AS AMENDED MAY 3, 1890

TITLE 1

Right of Property in Trade Marks

Article 1. The mark of trade or of commerce is discretionary.

However, it may exceptionally be declared obligatory by decrees rendered in the form of regulations of public administration for products determined therein.

The following are to be considered as marks of trade and of commerce: names under a distinctive form, denominations, emblems, imprints, stamps, seals, vignettes, reliefs, letters, figures, wrappers, and all other signs serving to distinguish the products of a factory or the objects of commerce.

Art. 2. No one shall be entitled to claim the exclusive property of a mark unless he has deposited with the Clerk of the Tribunal of Commerce of his domicile:

1) Three specimens of the print of the model of this mark;

2) An electrotype of the mark;

In case of the deposit of several marks belonging to the same person, it is only necessary to make out one official report (*procès-verbal*), but there must be filed as many specimens of the prints in triplicate and as many electrotypes as there are distinct marks.

There shall be sent to the depositor one of the specimens deposited provided with the endorsement of the Clerk, and bearing indication of the day and the hour of deposit.

The dimensions of the electrotypes must not exceed 12 centimetres on a side.

The electrotypes will be returned to the party interested after the official publication of the marks by the Department of Commerce, of Industry, and of the Colonies.

Art. 3. The deposit shall be effective for only fifteen years.

Ownership of the mark may always be preserved for a new term of fifteen years, by means of a new deposit.

Art. 4. There shall be collected a fixed fee of one franc for the drawing up of the official report of deposit of each mark, and for the cost of issuing, not including the cost of stamp and of registration.

TITLE 2

Provisions Relating to Foreigners

Art. 5. Foreigners who possess in France industrial or

commercial establishments shall enjoy, for the products of their establishments, the benefit of the present law on complying with the formalities that it prescribes.

ART. 6. Foreigners and Frenchmen whose establishments are situated outside of France shall enjoy equally the benefit of the present law for the products of these establishments, if in the countries where they are situated diplomatic conventions have established reciprocity for French marks.

In this case the deposit of foreign marks shall take place with the Clerk of the Tribunal of Commerce of the Department of the Seine.

TITLE 3

PENALTIES

ART. 7. The following persons will be punished by a fine of from fifty to three thousand francs and imprisonment of from three months to three years, or one of these penalties only:

1) Those who have counterfeited a mark or made use of a counterfeit mark;

2) Those who have fraudulently affixed to their products or objects of commerce a mark belonging to another;

3) Those who have knowingly sold or offered for sale one or several products bearing a mark counterfeited or fraudulently affixed.

ART. 8. The following persons will be punished by a fine of from fifty to two thousand francs and imprisonment of from one month to one year, or one of these penalties only:

1) Those who, without counterfeiting a mark, have made a fraudulent imitation of it of a nature to deceive the purchaser, or have made use of a mark fraudulently imitated;

2) Those who have made use of a mark bearing indications calculated to deceive the purchaser as to the nature of the product;

3) Those who have knowingly sold or offered for sale one or several products bearing a mark fraudulently imitated or bearing indications calculated to deceive the purchaser as to the nature of the product.

ART. 9. The following persons will be punished by a fine of from fifty to one thousand francs and imprisonment of from fifteen days to six months, or one of the penalties only:

1) Those who have not affixed to their products a mark declared obligatory;

2) Those who have sold or offered for sale one or several products not bearing the mark declared obligatory for that species of products;

3) Those who have contravened the provisions of decrees rendered in execution of Art. 1 of the present law.

ART. 10. The penalties established by the present law may not be accumulated.

The severest penalty alone is to be inflicted for all deeds prior to the first act of prosecution.

ART. 11. The penalties provided for in Arts. 7, 8 and 9 may be doubled in case of renewal of the offense.

There is a renewal of the offense whenever there has been pronounced against the accused within the preceding five years a sentence for an offense provided for by the present law.

ART. 12. Art. 463 of the Penal Code may be applied to offenses provided for by the present law.

ART. 13. The offenders may, moreover, be deprived of the right to participate in the elections of Tribunals and of Chambers of Commerce, of Consulting Chambers of Arts and Manufacturers, and of Councils of *Prud'hommes* during a time that shall not exceed ten years.

The Tribunal may order the posting of the judgment in places that it may determine and its insertion integrally or in extract in journals that it may designate, all at the cost of the offender.

ART. 14. The confiscation of products the mark of which shall be found contrary to the provisions of Arts. 7 and 8, may, even in the case of acquittal, be pronounced by the Tribunal, as well as that of instruments and utensils that have especially served to commit the offense.

The Tribunal may order that the confiscated products be turned over to the proprietor of the mark counterfeited or fraudulently affixed or imitated, independently of more ample damages, if there be such.

In every case it shall order the destruction of the marks found to be contrary to the provisions of Arts. 7 and 8.

ART. 15. In the case provided for by the first two paragraphs of Art. 9, the Tribunal will always prescribe that the marking declared obligatory be affixed upon the products that are subject to them.

The Tribunal may pronounce the confiscation of products if the accused has incurred, within the previous five years, a sentence for one of the offenses foreseen in the first two paragraphs of Art. 9.

TITLE 4

JURISDICTION

ART. 16. Civil actions relative to marks shall be brought before the Civil Tribunals and judged as summary matters.

In case of action commenced criminally, if the accused raises for his defense questions relative to the ownership of the mark, the Police Court shall rule on the exception.

ART. 17. The proprietor of a mark may make, proceeding through any marshal, a detailed description, with or without seizure, of the products that he alleges to be marked to his prejudice in contravention of the provisions of the present law, by virtue of an ordinance of the President of the Civil Tribunal of First Instance or of the Justice of the Peace of the Canton, in default of a tribunal, in the place where are found the products to be described or seized.

The order shall be granted on simple petition and on presentation of the official report proving the deposit of the mark. It shall contain, should there be occasion, the nomination of an expert in order to aid the marshal in his description.

When seizure is petitioned the judge may require from the petitioner security which he is bound to deposit before proceeding to make the seizure.

Copy of the order and of the act proving the deposit of the security, if such be the case, shall be left with the holders of the objects described or seized; all this under penalty of nullity and of indemnity against the marshal.

ART. 18. In default of action by the petitioner, either civilly or criminally, within a delay of fifteen days, in addition to one day for every five myriametres of distance between the place where the objects described or seized are found and the domicile of the party against whom the action is to be brought, the description or seizure shall be null at law, without prejudice to the damages that may be claimed, if there be such.

TITLE 5

GENERAL AND TRANSITORY PROVISIONS

ART. 19. All foreign products bearing either the mark or the name of a manufacturer resident in France, or the indication of the name or of the place of a French factory, shall be denied entry and excluded from transit and from storage, and may be seized at any place whatever, either at the suit of the Customs authorities, or on the request of the Public Ministry, or of the injured party.

In the case where seizure is made at the suit of the Customs authorities, the official report of seizure shall be immediately addressed to the Public Ministry.

The delay within which the action provided for by Art. 18 must be instituted under penalty of nullity of the seizure, either by the injured party or by the Public Ministry, shall be ex-

tended to two months.

The provisions of Art. 14 are applicable to products seized by virtue of the present article.

ART. 20. All the provisions of the present law shall be applicable to wines, brandies, and other drinks, to cattle, grains, flour, and generally to all products of agriculture.

ART. 21. Every deposit of a mark made with the Clerk of the Tribunal of Commerce previous to the present law shall have effect for fifteen years, counting from the time when said law shall become operative.

ART. 22. The present law shall only become operative six months after its promulgation. Regulations of the Public Administration shall determine the formalities required for the deposit and the publicity of marks, and all the other measures necessary for the execution of the law.

ART. 23. This is not derogatory to such previous enactments as are not contrary to the present law.

Deliberated in public session at Paris, May 12, 1857.

LAW OF JUNE 26, 1920

ARTICLE 1. The deposit or the renewal of the deposit of a mark of manufacture or of commerce shall necessitate the payment:

1) Of a fixed filing fee of 25 francs, collected to the profit of the State.

2) Of a registration fee of 10 francs per Class for the goods upon which the mark is to be affixed, collected to the profit of the National Office of Industrial Property, without the total amount to be paid in on this head being possible of exceeding the sum of 100 francs.

There must be delivered to the Clerk of the Tribunal of Commerce in which the deposit or renewal of the mark is effected:

1) A notice containing the enumeration of the goods or classes of goods for which the mark is to be employed.

2) In addition to the three facsimiles of the mark required by Art. 2 of the Law of June 23, 1857, modified by the Law of May 3, 1890, a number of facsimiles of the mark equal to that of the Classes or Categories of goods on which the mark is to be affixed.

3) On pain of refusal of the deposit, the papers in verification of the payment of the above noted taxes.

ART. 2. No transfer of property, no assignment or concession of the right of exploitation or of pledge, relative to a mark

deposited, shall be valid as regards third parties except after having been recorded in the special Register of Marks of Manufacture or of Commerce kept at the National Office of Industrial Property, and in which are mentioned the names and addresses of the depositors, assignees, or licencees of marks, as well as all indications and notifications relative to acts affecting the ownership of marks.

Every inscription concerning the transfer of property, the assignment or concession of a right of exploitation or of pledge concerning a mark deposited shall necessitate the collection of a tax of 10 francs, to the profit of the State, and of a tax of 3 francs per Class of goods for which the mark is applicable, to the profit of the National Office of Industrial Property. For entry of transfer by succession, the fee shall be 10 francs, whatever be the number of marks included in the declaration. Every other inscription and every cancellation effected upon the Register of Marks shall be subject to the collection of a fee of three francs per mark, to the profit of the National Office of Industrial Property.

The National Office shall be bound to deliver to all those that so request, on the payment to its profit of a special fee, a copy of the registrations entered upon the precited Register, as also of inscriptions existing as to marks given in pledge, or a certificate certifying that such do not exist.

. . . . . .

ART. 6. Decrees rendered at the instance of the Minister of Commerce and of the Minister of Finances shall determine the measures necessary for the application of the present law.

The present law, deliberated and adopted by the Senate and by the Chamber of Deputies, shall be carried out as a law of the State.

GAMBIA

ORDINANCE OF AUGUST 31, 1916

Short Title

1. This Ordinance may be cited as the Trade Marks Ordinance, 1916.

DEFINITIONS

Interpretation

2. For the purposes of this Ordinance, unless the context otherwise requires:—

"Person" shall include a body corporate.

A "Mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

A "Trade Mark" shall mean a mark used or proposed to be used upon, or in connection with, goods for the purposes of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

A "Registrable Trade Mark" shall mean a trade mark which is capable of registration under the provisions of this Ordinance.

A "Registered Trade Mark" shall mean a trade mark which is actually on the register.

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by Rules of Court; and, in other cases, prescribed by this Ordinance or any rules made thereunder.

"Registrar" shall mean the Colonial Registrar.

"Court" shall mean the Supreme Court of the Colony.

"Goods" shall mean anything which is the subject of trade, manufacture, or merchandise.

"Colony" shall include Protectorate.

REGISTER OF TRADE MARKS

3. There shall be kept at the Registrar's office a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, the dates on which applications were made for their registration, as hereinafter provided, notifications of assignments, and of transmissions of trade marks, and such other matter as may be from time to time prescribed.

No Trust to be Entered on Register

4. There shall not be entered in the register kept under

this Ordinance, any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of Existing Register and Classification

5. The register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the register. Subject to the provisions of sections 41 and 46 of this Ordinance the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the Ordinances in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

All trade marks registered under the classification of goods as provided in the Second Schedule to the rules made by the Governor-in-Council in pursuance of section 40 of the Trade Marks (Registration) Ordinance, 1900, and dated April 26th, 1901, shall be deemed to be registered under the corresponding classification of goods as provided in Part 3 of the Schedule to this Ordinance.

Saving for Marks Already Registered Under Ordinance No. 6 of 1900—Transfer to Register Created Under This Ordinance

6. (1) Nothing herein contained shall affect the validity of any act done or any right or obligation acquired or incurred under or by virtue of the provisions of the Trade Marks (Registration) Ordinance, 1900, or of any rules made thereunder.

(2) All trade marks duly registered under the said Trade Marks (Registration) Ordinance, 1900, shall, three months before the expiration of the first period of registration, be transferred to the register kept under the provisions of this Ordinance, and shall thereupon be subject to the provisions of this Ordinance in all respects as though they had been originally registered thereunder.

Inspection of Register and Granting of Certified Copies

7. The register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance and to such regulations as may be prescribed; and certified copies of any entry in any such register shall be given to any persons requiring the same, on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

8. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or a surname;

Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered:

Provided always that any mark which has been registered as a distinctive mark in England under the Act of the Imperial Parliament shortly entitled the Trade Marks Act, 1905, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Connection of Trade Mark With Goods

9. A trade mark must be registered for particular goods or classes of goods. The applicant shall in his application state goods included in one class only. If the applicant desires to register the same mark for goods falling in more than one class, he shall make a separate application in respect of each class, and each of such applications shall be treated for all purposes as separate and distinct applications, and the entries on the register in pursuance of such applications shall for all purposes be deemed to relate to separate and distinct trade marks.

Coloured Trade Marks

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If, and so far as, a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Further Restriction on Registration

11. (1) It shall not be lawful to register as a trade mark

or part of a trade mark any matter, the use of which would, by reason of its being calculated to deceive or otherwise, be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered for any goods set forth and included in classes 23, 24 and 25* of Part 3 of the Schedule hereto, unless such trade mark has been and is registered in the United Kingdom in respect of such goods.

REGISTRATION OF TRADE MARKS

Application for Registration

12. (1) Any person claiming to be the proprietor of a trade mark may by himself or his agent apply to the Registrar for the registration thereof.

(2) The application must be made in the prescribed form, and must be accompanied by not less than three representations of the trade mark and by a stereotype block of such representation.

(3) The applicant must state the particular goods or classes of goods in connection with which he desires his trade mark to be registered.

(4) The application must be left with, or sent by post to, the Registrar.

(5) The date of the delivery or receipt of the application shall be endorsed thereon and recorded in the Registrar's Office.

(6) When an applicant for the registration of a trade mark is out of the Colony at the time of making the application he shall give the Registrar an address for service in the Colony, and if he fails to do so the Registrar may refuse to proceed with the application until the address has been given.

Action in Regard to Application

13. (1) Subject to the provisions of this Ordinance the Registrar may refuse such application as aforesaid, or may accept it absolutely or subject to conditions, amendments or modification.

(2) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(3) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions,

*Cl. 23. (a) Cotton yarn; (b) Sewing cotton.
Cl. 24. Cotton piece goods of all kinds.
Cl. 25. Cotton goods not included in other classes.

amendments or modifications, if any, the application is to be accepted.

Disclaimer

14. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Advertisement of Application

15. Every application for registration of a trade mark under this Ordinance, and a representation of such mark, shall, as soon as may be after its receipt, be advertised by the Registrar in the *Gazette* unless the Registrar refuses to entertain the application.

Opposition to Registration

16. (1) Any person may, within three months or such further time, not exceeding nine months in all, as the Registrar may allow, of the advertisement of the application, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing and in duplicate, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within one month after the receipt of such notice, or such further time, not exceeding three months in all, as the Registrar may allow, the applicant shall send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant send such counter-statement the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition, and if such security is not given within fourteen days after such requirement was made or such further time as the Registrar

may allow, the opposition shall be deemed to be withdrawn.

(5) If the person who gave notice of opposition duly gives such security as aforesaid, the Registrar shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the Court.

(6) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may determine to be reasonable.

(7) Where the opponent is out of the Colony he shall, with the notice of opposition to registration, give the Registrar an address for service in the Colony.

Cases, How Brought Before the Court

17. (1) When a case stands for the determination of the Court under the provisions of the last preceding section, the Registrar shall require the applicant to make a written application to the Court for an order that, notwithstanding the opposition of which notice has been given, the registration of the trade mark be proceeded with by the Registrar, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

(2) The applicant shall thereupon make his application or take such other proceedings as aforesaid, within the period of one month or such further time as the Registrar may allow, and shall also within the like period give notice thereof to the Registrar.

(3) If the applicant shall fail to make such application or to take such other proceedings, of which failure the non-receipt by the Registrar of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Costs

18. The Court shall have power in proceedings under the last two preceding sections of this Ordinance to award to any party such costs as it may consider reasonable, and to direct how, and by what parties, they are to be paid.

Date of Registration

19. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordi-

nance to be the date of registration.

Certificate of registration

20. The Registrar shall have a seal and on the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Advertisement of Application

21. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the *Gazette*. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Limit of Time for Proceeding with Application

22. Where the registration of a trade mark is not completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant or to his agent (if any) treat the application as abandoned unless it is completed before the expiration of fourteen days from such notice or of such further time as the Registrar may in special cases permit.

Identical Trade Marks

23. Except by order of the Court or in the case of trade marks in use before the first day of May, one thousand nine hundred, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such trade mark as to be calculated to deceive.

Rival Claims to Identical Marks

24. Where each of several persons claims to be proprietor of the same trade marks or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court or have been settled by agreement in a manner approved by him. The manner in which the rights of such claimants may be submitted to the Court shall, unless the Court otherwise order, be by a special case, which shall be filed and proceeded with in like manner as any other special case submitted to the Court, or in such other manner as the Court may direct. The special case may be agreed to by the claimants,

or if they differ, may be settled by the Registrar on payment of the prescribed fee.

Concurrent User

25. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

ASSIGNMENT

26. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Apportionment of Marks on Dissolution of Partnerships

27. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry one business and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

28. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined Trade Marks

29. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each separate trade mark must satisfy all the conditions, and shall have all the incidents of an independent trade mark, except that when registered, it and the trade mark of

which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of Trade Marks

30. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of:—

(a) Statements of the goods for which they are respectively used or proposed to be used; or

(b) Statements of number, price, quality, or names of places; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) Colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and User of Associated Trade Marks

31. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks: Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Duration and Renewal of Registration

32. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of Registration

33. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed the expiration of the last registration.

Procedure on Expiry of Period of Registration

34. At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of Unrenewed Trade Mark

35. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal.

Correction and Rectification of Applications, or of the Register

36. The Registrar may, on request in writing, accompanied by the prescribed fee:—

(a) Correct any clerical error in, or in connection with, an application for the registration of a trade mark, or

(b) Permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered.

Correction of Register

37. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name:—

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Entry in Register of Assignments

38. Subject to the provisions of this Ordinance, where a person becomes entitled by assignment, transmission, or other operation of the law to a registered trade mark, the Registrar shall, on request made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered as proprietor of the trade mark in the register of trade marks: Provided that any decision of the Registrar under this section shall be subject to appeal to the Court.

Application to Alter Registered Trade Mark

39. (1) The registered proprietor of any registered trade mark may apply to the Registrar for leave to add to, or alter, such mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse or grant leave on such terms as he may think fit; but any such refusal or conditional permission shall be subject to appeal to the Court.

(2) If leave be granted, the mark as altered shall be advertised in the prescribed manner; and the Registrar shall, on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Rectification of Register by the Court

40. (1) The Court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from the register kept under this Ordinance, or by any entry made without sufficient cause in any such register, or by any entry wrongfully remaining on the register, make such order for making, expunging, or varying the entry as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may in any proceedings under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(4) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply

to the Court under the provisions of this section.

(5) If any order of the Court rectifying the register is made, the Registrar shall on proof thereof and on payment of the prescribed fee cause the register to be altered in conformity with such order.

Trade Marks Registered Under Previous Enactments

41. No trade mark which is upon the register at the commencement of this Ordinance, and which under this Ordinance is a registrable trade mark, shall be removed from the register on the ground that it was not registrable under the Ordinance in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the Ordinance then in force.

Non-User of Trade Mark

42. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods and that there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of Registered Proprietor

43. Subject to the provisions of this Ordinance—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipt for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of Proprietor of Trade Mark

44. Subject to the provisions of section 46 of this Ordinance and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade

mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same, or substantially the same, trade mark in respect of the same goods, no right of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be Primâ Facie Evidence of Validity

45. In all legal proceedings relating to a registered trade mark (including applications under section 40 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be Conclusive After Seven Years

46. In all legal proceedings relating to a registered trade mark (including applications under section 40 of this Ordinance) the original registration of such trade mark shall, after the expiration of seven years from the date of such original registration (or seven years from the passing of this Ordinance, whichever shall last happen), be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 11 of this Ordinance: Provided that nothing in this Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section 25 of this Ordinance.

No Protection for Unregistered Trade Marks

47. No person shall be entitled to institute any proceedings to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been in use for not less than three years prior to the commencement of such proceedings, and has been refused registration under this

Ordinance. The Registrar may, on request, grant a certificate that such registration has been refused.

Action for infringement

48. In an action for the infringement of a trade mark, the Court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered and of any trade marks or get-up legitimately used in connection with such goods by other persons.

No interference with bonâ fide user of name or description of goods

49. No registration under this Ordinance shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business or the use by any person of any *bonâ fide* description of the character or quality of his goods.

Action for passing off goods

50. Nothing in this Ordinance shall be deemed to affect the rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificates of validity

51. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and, if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Procedure before the Court

52. Every application made to the Court under sections 39 and 40 hereof, and all proceedings thereunder, shall be conducted in such manner as the Court may direct.

COSTS

53. In all proceedings before the Court under this Ordinance, the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Certified copies to be admitted as evidence

54. Printed or written copies or extracts purporting to be

certified by the Registrar, of or from any document, register or other books filed or kept under this Ordinance in his office shall be admitted in evidence in all Courts in the Colony, and in all proceedings, without further proof or production of the originals.

Certificate of registration to be primâ facie evidence

55. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorised by this Ordinance, or any rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Applications may be sent by post

56. (1) Any application, notice or other document authorised or required to be left with, made or given to the Registrar or to any other person under this Ordinance, may be sent by a registered letter through the post, and if so sent shall be deemed to have been so left, made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and registered at the Post Office.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

57. Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Registrar to consult Legal Adviser

58. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Ordinance, apply to the Legal Adviser for directions in the matter.

POWER TO MAKE RULES AS TO FEES, ETC.

Power to make rules

59. (1) The Governor-in-Council may from time to time make, alter or revoke rules, prescribe such forms, and generally do such things as he thinks expedient, subject to the provisions of this Ordinance:

(a) For regulating the practice of registration under this Ordinance;

(b) For classifying goods for the purposes of registration of trade marks;

(c) For prescribing the fees payable in respect of applications and registrations and other matters under the Ordinance, and the mode of payment of the same;

(d) Generally for regulating all things by the said Ordinance placed under the direction or control of the Registrar;

(e) For altering or revoking the provisions contained in the Schedules hereto.

(2) Any rules made in pursuance of this section shall be published in the *Gazette,* and shall come into operation on the publication thereof, subject to disallowance by His Majesty.

(3) Unless and until they be altered or revoked under this section, the provisions contained in the Schedule hereto shall be and remain in force.

Special Trade Marks

Standardisation, &c., of trade marks

60. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Registrar may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered, such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Registrar.

Trade Marks Registered in Great Britain

61. (1) Any person who has registered a trade mark in Great Britain shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall have the same date as the application for registration in Great Britain, provided that his application is made within four months from his applying for protection in Great Britain: Provided that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

(2) The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration of the trade mark.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance: Provided that any trade mark, the registration of which has been duly obtained in Great Britain, may be registered under this Ordinance.

Powers of Customs authorities to detain goods in certain cases

62. Any person who has duly registered his trade mark in respect of any goods in Great Britain may by himself, his agent or representative in the Colony, on giving notice in writing to the Receiver General or other proper Officer of the Customs that goods bearing a mark so nearly resembling his trade mark as to be well calculated to deceive are being imported into the Colony, cause the said goods to be detained by such Receiver General or other proper Officer of the Customs until the rights of the matter have been determined according to law: Provided that any such informant shall reimburse to the Receiver General or other proper Officer of the Customs all expenses and damages incurred in respect of such detention made on his information, and of any proceedings consequent on such detention.

Offences

63. (1) If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such register, or produces or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence, and on conviction shall be liable to imprisonment, with or without hard labour, for a term not exceeding seven years, and such offence shall be tried on information.

(2) Any person who represents any trade mark as registered, which is not so, shall be guilty of an offence, and liable, on conviction, to a penalty not exceeding five pounds.

A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

(3) If any person, without the authority of His Majesty, uses in connection with any trade, business, calling or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling or profession any device,

emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence, and liable on conviction to a penalty not exceeding twenty pounds: Provided that nothing in this sub-section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

COURTS

Supreme Court. Jurisdiction and practice. No. 4 of 1889

64. So far as the same may be applicable, the provisions of the Supreme Court Ordinance, 1889, and the practice and procedure thereunder shall extend and apply to all proceedings under this Ordinance.

Offences, how tried

65. All offences under this Ordinance (with the exception of that contained in section 63, sub-section (1), shall be tried and punishable before the Police Magistrate or two Justices of the Peace.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS

66. (1) If His Majesty is pleased by Order-in-Council to apply the provisions of section 91 of the Act of the Imperial Parliament shortly entitled the Patents and Designs Act, 1907,* to the Colony, then any person who has applied for protection for any trade mark in any foreign State with the Government of which His Majesty has made an arrangement under the said section for mutual protection of trade marks shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall take effect from the same date as the date of the application in such foreign State.

(2) Every application for the registration of a trade mark under this section shall be made within four months from the date of the application for protection in such foreign State.

(3) Nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

(4) The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration thereof.

(5) The application for the registration of a trade mark under this section shall be made in the same manner as an or-

* For provisions in question see Great Britain: Patents and Designs Act, 1907, Sec. 91.

dinary application under this Ordinance: Provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(6) The provisions of this section shall apply only in the case of those foreign States with respect to which His Majesty shall from time to time by Order-in-Council declare the provisions of the aforesaid section 91 of the Patents and Designs Act, 1907, to be applicable, and so long only in the case of each State as such Order continues in force with respect to that State.

Intercolonial arrangements

67. (1) Whenever it appears to the Governor-in-Council that the legislature of any British Possession has made satisfactory provision for the protection in such Possession of trade marks registered in the Colony, the Governor-in-Council may by Order apply all or any of the provisions of the last preceding section of this Ordinance with such variations or additions as may seem fit, to trade marks registered in such British Possession.

(2) An Order-in-Council under this section shall, from a date to be mentioned in the Order, take effect as if its provisions had been contained in this Ordinance, but the Governor-in-Council may revoke such Order.

GENERAL

Provisions as to Sundays and public holidays

68. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document with, or paying any fee to, the Registrar, shall fall on a Sunday or public holiday, it shall be lawful to leave such document or to pay such fee on the day next following such Sunday or public holiday or holidays, if two or more of them occur consecutively.

Infants, lunatics, &c.

69. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any affidavit or doing anything required or permitted by this Ordinance or by any rules made under the authority of this Ordinance, then the guardian of such incapable person, or if there be none, any person appointed by any Court possessing jurisdiction in respect of the property of incapable persons upon the petition of any person on behalf of such incapable person, or any other person interested in the making of such affidavit or doing such thing, may make such affidavit, or an affidavit as nearly corresponding thereto as circumstances may permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall, for the purposes of this Ordinance, be as effectual

as if done by the person for whom he is substituted.

REPEAL

Repeal of Ordinances No. 6 of 1900 and No. 6 of 1904

70. The Trade Marks (Registration) Ordinance, 1900, and the Trade Marks (Registration) Amendment Ordinance, 1904, are hereby repealed.

GERMANY

LAW OF MAY 12, 1894, AS AMENDED MARCH 31, 1913

SECTION 1. Any person that desires to employ in his business a merchandise mark to distinguish his merchandise from that of others, may declare it for registry in the Roll of Marks (*Zeichen Rolle*).

SEC. 2. The Roll shall be kept at the Patent Office. The declaration of a mark shall be made in writing to the Patent Office. Every declaration must be accompanied by a statement of the enterprise for which the mark is to be employed and a specification of the merchandise for which it is intended, as well as a distinct representation of the mark and a description thereof so far as it may be necessary.

The Patent Office shall prescribe rules concerning other requirements of the declaration.

A fee of 30 marks shall be paid with the declaration of each mark, and at each renewal of the declaration a fee of 10 marks. If registration does not result from the first declaration, 20 marks of the fee shall be refunded.

SEC. 3. The Roll of Marks shall contain, first, the date of receipt of the declaration; second, the facts to accompany the declaration required by the first paragraph of section 2 of this law; third, the name and domicile of the proprietor of the mark and of his attorney, if any, as well as changes in the person, the name or the domicile of the proprietor of the mark or his attorney; fourth, the date of renewal of the declaration; fifth, the date of cancellation of the mark.

The Roll shall be open to public inspection.

Every registration and cancellation will be officially published. The Patent Office will publish periodically abstracts of registrations and cancellations.

SEC. 4. Registration is to be refused in the case of marks common to the trade, as well as to trade marks:

1) That consist exclusively of figures, letters, or of such words as contain information as to the manner, time and place of manufacture, as to the quality, as to the destination, or as to the price, quantity or weights of the goods.

2) That contain the arms of a State, or other State insignia, or the arms of a domestic town, parish or other community.

3) That contain representations that might excite annoy-

ance, or declarations that do not *prima facie* conform to the actual facts and involve the danger of deception.

The provisions of No. 2 are without force if the applicant is authorized to place the insignia or arms in the trade mark.

Marks that have become void may not be registered anew for the goods for which they were registered, or for similar goods on behalf of some one other than the last proprietor, until after the expiration of two years from the day of expiration.

SEC. 5. If the Patent Office shall deem that any declared mark is in conflict with one previously declared for the same or similar merchandise under the law of November 30, 1874, or under the present law, it shall advise the owner of the earlier mark. If within a month he shall make no opposition to the registry of the new declared mark, it may be registered. In the contrary case the Office shall determine whether there is an actual conflict.

The omission of the notice contemplated in the preceding paragraph shall not constitute claim for indemnity.

SEC. 6. If the decision (Sec. 5, par. 1) be that there is no conflict between the marks, the new declared one may be registered.

If the decision be that conflict exists, registration shall be refused. In case the declarant shall desire to establish his right to registry, notwithstanding the conflict, he must do so by action against the opposing party. Registry effected by virtue of a decision in his favor shall be effective as of the date of his original declaration.

SEC. 7. Rights resulting from the declaration or registry of a merchandise mark shall pass by inheritance, and may be transmitted to other persons by testamentary disposition. They cannot however pass to others but along with the business to which the mark appertains. The transfer shall be entered in the Roll of Marks at the instance of the successor, provided the assent of the original owner is satisfactorily established. If the original owner is deceased the successor must establish his title.

The new owner cannot benefit by the rights accruing from registration until the transfer has been recorded in the Roll of Marks.

Decisions and judgments of the Patent Office that require to be notified to the proprietor of a mark must be addressed to the proprietor of record. If he is deceased the Patent Office may, at its discretion, consider the notice as given, or cause search to be made for the heirs, in order to notify them.

SEC. 8. A mark can be cancelled on the Roll at any time

on demand of the owner.

Cancellation will take place by Office action, first, if ten years shall have expired since the declaration or renewal of the mark; second, if the registration shall have been refused.

When there is a question of cancellation without the request of the owner, the Office shall give him notice. If he does not reply within a month the mark shall be cancelled. If he replies the question shall be decided by the Office. If such cancellation is under consideration by reason of expiration of the term of ten years, it shall not take place, if, within one month from the notice, the owner of the mark shall renew it by the payment of 10 marks, in addition to the renewal fee, on which the renewal shall be regarded as having taken place at the expiration of the preceding term.

SEC. 9. A third party may demand the cancellation of a merchandise mark, first, if, by virtue of a prior declaration, the mark has been registered in his name for the same or similar merchandise in the Roll of Marks or in the Registers of Marks kept under the law of November 30, 1874; second, if the enterprise to which it appertains has not been maintained by the owner of record; third, if facts establish that the contents of the mark do not agree with actual conditions, and are liable to mislead.

When a mark, excluded from registry under the law of November 30, 1874, has been considered in commercial circles up to the enactment of this law as the distinctive sign of the merchandise of a particular concern, and this mark has been entered in the Roll of Marks in the name of another person under this law, the owner of said concern shall have until October 1, 1895, to demand its cancellation. If the demand is granted the mark may be registered in the Roll in the name of the applicant before the expiration of the period fixed by section 4, par. 2.

The demand for cancellation is to be made in the form of an action at law against the owner of record, or against his heirs if he is deceased.

If, before or after the beginning of the action, the mark has been assigned, the decision shall be effectually operative as regards the assignee. The provisions of Secs. 63-66 and 73 of the Code of Civil Procedure shall apply to the right of the assignee to intervene in the suit. In the second case contemplated in the first paragraph of this section, the demand of cancellation may be addressed in the first place to the Patent

Office, which shall give notice thereof to the person registered as proprietor. If he makes no opposition in one month the mark shall be cancelled. If he makes opposition, the applicant may prosecute his demand for cancellation by an action at law.

SEC. 10. Declarations, assignments for record, and objections to cancellation, shall be dispatched by a summons and a decision, as in the procedure concerning patents. In the case contemplated in section 5, par. 1, there shall be no summons.

An appeal is open to the applicant from a rejection of his application, and also to the owner of a mark from a decree of cancellation in the face of his protest. These appeals are to be filed in the Patent Office within one month after notification.

Notifications concerning registry, assignment, or cancellation of marks shall be given by registered letter. If notification cannot be given in Germany, it shall be sent by mail as provided in Secs. 161 and 175 of the Code of Civil Procedure.

SEC. 11. The Patent Office shall give opinions upon questions concerning registered merchandise marks on request of the courts, when the inquiry relates to a legal proceeding in which experts differ.

SEC. 12. The effect of registration of a mark shall be to confer on the registrant the exclusive right to affix the mark to merchandise of the kind named in the declaration, or to its wrappers or containers; to put on the market goods so marked; and to employ the mark on advertisements, price lists, business letters, press notices, invoices, and analogous matter.

In case of cancellation no right shall be inferred from registration for the period during which the cause of cancellation existed.

SEC. 13. Registration of a mark shall not prevent any person from employing, even in an abridged form, on his goods or on their inclosure, his name, firm name, or residence, nor indications concerning the mode, time or place of manufacture, or the quality, destination, price, quantity or weight of the goods, nor from making use of similar indications in trade.

SEC. 14. If any person shall knowingly or through gross carelessness illegally apply to his goods or their inclosures, or to his advertisements, business letters, price lists, press notices, invoices and the like, the name or firm name of another or a mark protected under the present law, or shall put in circulation or on sale merchandise thus illegally marked, he shall be bound to indemnify the injured party. If he shall commit this act knowingly he shall be further punished by a fine of from 150 to 5000 marks, or imprisonment not exceeding six months. Penal action shall proceed only on complaint, and it may be

withdrawn.

SEC. 15. If any one with the intent to cause deception in commerce and trade, shall without authority use upon goods, or their inclosures, or on advertisements, price lists, business letters, press notices, invoices, etc., a device considered in commercial circles as the distinctive sign of another person's similar merchandise; or if any one, with the same intent, shall put in circulation or offer for sale goods so marked, he shall be bound to indemnify the injured party, and shall be liable to a fine of from 100 to 3000 marks, or imprisonment not exceeding three months. Penal action shall only take place on a complaint and it may be withdrawn by the plaintiff.

SEC. 16. Any one who, with intent to cause deception as to the quality or value of goods, shall have falsely affixed thereto, or to their wrappers or containers, or used in his advertisements, price lists, business letters, press notices, invoices, etc., the Arms of a State, or the name or insignia of a locality, community or more extended communal union, and any one who with the same object shall have put in circulation or offered for sale goods so marked, shall be liable to a fine of from 150 to 5000 marks, or imprisonment not exceeding six months.

The employment of names, which, by the usages of trade, serve to designate certain goods without indicating their origin, does not come within the scope of this provision.

SEC. 17. Foreign goods unlawfully marked with the name of a German firm or place, or with a merchandise mark registered in the Roll of Marks, shall be liable to seizure and confiscation upon entry into Germany for importation or transit, on the demand of the injured party, who shall give security. Seizure may be effected by the officers of customs and revenue. Confiscation shall be adjudged by a penal decision of the executive authority (Sec. 459, Code of Penal Procedure).

SEC. 18. In lieu of the damages contemplated in this law, on the demand of the injured party, there may be awarded, in excess of the penalty, an indemnity to be paid to him not exceeding 10,000 marks. Persons condemned to pay this indemnity shall be jointly responsible. The allowance of this indemnity shall exclude all other claims for damages.

SEC. 19. In a condemnation under Secs. 14, 15, 16, or 18, the judgment shall order the illegal mark effaced from all articles in the possession of the condemned. If it cannot be otherwise done, the destruction of the goods may be ordered.

In case of a penal condemnation there shall be accorded to the injured party in the cases contemplated in Secs. 14 and 15 the privilege of publishing the judgment at the expense of the

convicted party. The judgment shall determine the nature of the publication and the period within which it shall be made.

SEC. 20. The application of the provisions of this law shall not be prevented by any modifications that may be employed in the reproduction of foreign names, firms, marks, arms, and any other distinctive signs of merchandise, if, in spite of such modifications, the possibility of mistake is not avoided.

SEC. 21. In civil suits in which by complaint or rejoinder a claim is made founded on the provisions of this law, the hearing and final decision shall be referred to the Imperial Court under Sec. 8 of the Introductory Act to the Judicature law.

SEC. 22. Whenever German goods introduced into a foreign country, either as imported or in transit, shall be required to be marked to show their German origin, or shall be treated less favorably by customs officers than the goods of any other country in respect to the marks they are required to bear, the Federal Council is empowered to impose a corresponding burden upon foreign goods on importation into Germany or entered for transit, and it may order the seizure and confiscation of the goods in case of contravention. Seizure shall be made by the customs and revenue officers. Confiscation shall be adjudged by a penal decision of the executive authorities (Sec. 459, Code of Penal Procedure).

SEC. 23. A person not having an establishment in Germany may have a claim to the protection of this law only when, according to a publication in the *Reichsgesetzblatt,* the State in which his establishment is situated accords to German merchandise marks protection to the same extent as to domestic marks.

The protection of a merchandise mark and the rights resulting from registry may be claimed only through the medium of an attorney residing in the country. Such attorney shall be authorized to represent his principal in the procedure before the Patent Office under this law, as well as in civil actions concerning the mark; he shall also be empowered to institute penal actions. Either the court within whose jurisdiction the attorney is domiciled or that of the place where the Patent Office is situated is competent to try suits against the registered owner of a mark.

Any one that shall make declaration of a foreign mark will have to show at the same time that he has applied for and obtained legal protection for it in the State where his establishment is situated. Unless otherwise provided in international conventions, registration cannot take place if the mark does not satisfy the requirements of this law.

SEC. 24a. Associations recognized by law and pursuing economic ends may register marks that shall serve as trade marks in the business operations of their members, even if such associations do not own an establishment for the manufacture or handling of goods (association marks).

Juridical persons under the law shall stand in the same position as the above mentioned associations.

The provisions of Sec. 1 and ff., as to trade marks shall apply to association marks insofar as other provision is not made in Secs. 24a to 24h.

SEC. 24b. The application for the registration of an association mark must be accompanied by a statement setting forth the name, location, purpose and organization of the association, and containing information as to those entitled to use the mark, the regulations governing its use and the rights and duties of the members in case of the misuse of the mark. Subsequent changes are to be reported to the Patent Office. The examination of the statement shall be open to all.

A fee of 200 marks shall be collected in connection with every application for the registration of an association mark and a charge of 100 marks in connection with each renewal. When the first application is not granted, 100 marks of the fee shall be refunded.

SEC. 24c. The regulations of the Patent Office shall govern the preparation of the Register of Association Marks.

SEC. 24d. Rights obtained from the application for registration of an association mark or actual registration cannot as such be transferred to another.

SEC. 24e. A third person may petition the cancellation of an association mark without prejudice to the provisions of Sec. 9, Nos. 1 and 3:

1) If the association for which the mark has been registered no longer exists;

2) If the association permits the mark to be used in a manner contrary to the general purposes of the association or to the statement that accompanied the application for its registration. Such misuse of the mark may be said to exist when the business world is misled by others being permitted to use the mark.

Paragraph 5 of Sec. 9 shall apply in cases arising under No. 1.

SEC. 24f. The claim of an association for damages by reason of the unauthorized use of the association mark (Sec. 14) shall embrace also any damages suffered by its members.

SEC. 24g. If it be proven to the Patent Office that a regis-

tered trade mark was used by an association up to the time of the going into effect of this law, on the application of the association the mark shall be transferred to the Register of Association Marks. The application must be made within one year from the going into effect of this law and all the provisions for registering an association mark must be complied with. The term of the renewal of the mark shall begin with the filing of the application.

SEC. 24h. The provisions as to association marks shall be applicable for foreign association marks only when reciprocity is provided for in a decree published in the Imperial Law Gazette (*Reichsgesetzblatt*).

SEC. 25. Necessary rules for the execution of this law in matters concerning the organization and conduct of business at the Patent Office, as well as the procedure to be followed therein, shall be established by an Imperial Ordinance with the assent of the Federal Council.

SEC. 26. This law shall go into force on October 1, 1894. From that date declarations of merchandise marks will no longer be accepted under the Law of November 30, 1874, for the Protection of Marks.

GIBRALTAR

Gibraltar has no proper trade mark statute.

Ordinance to Prevent the Imposition of Fraudulent Marks on Merchandise, 1888, No. 4, substantially like Merchandise Marks Act of Great Britain, which see.

GOLD COAST COLONY

ORDINANCE [OF MAY 4], 1914

Short title and commencement

1. This Ordinance may be cited as the Trade Marks Ordinance, 1914, and shall come into operation on the 4th day of May, 1914.

DEFINITIONS

2. For the purpose of this Ordinance unless the context otherwise requires:

"Person" includes a body corporate.

A "Mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof.

A "Trade Mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purposes of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with offering for sale.

A "Registrable Trade Mark" shall mean a trade mark which is capable of registration under the provision of this Ordinance.

A "Registered Trade Mark" shall mean a trade mark which is actually on the register.

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by Rules of Court; and, in other cases, prescribed by this Ordinance, or any Rules made thereunder.

"Registrar" shall mean "The Registrar of Trade Marks."

"Court" shall mean the "Supreme Court of the Colony."

"Goods" shall mean anything which is the subject of trade, manufacture, or merchandise.

3. The Governor may appoint a Registrar for the purposes of this Ordinance, and until such appointment shall be made the Chief Registrar shall be such Registrar.

4. There shall be kept at the Registrar's Office a book called the register of trade marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, the dates on which applications were made for their registration, as hereinafter provided, notification of assignments, and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

No trust to be entered on register

5. There shall not be entered in the register kept under this Ordinance any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of existing register and classification

6. The register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the register. Subject to the provisions of sections forty-two and forty-seven of this Ordinance the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the Ordinances in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

All trade marks registered under the classification of goods as provided in the Second Schedule of the Trade Marks Ordinance, 1900, shall be deemed to be registered under the corresponding classification of goods as provided in part 3 of the Schedule to this Ordinance.

Saving for marks already registered under Trade Marks Ordinance, 1900

7. (1) Nothing herein contained shall affect the validity of any act done or any right or obligation acquired or incurred under or by virtue of the provisions of the Trade Marks Ordinance, 1900, or of any Ordinance amending the same, or of any rules made thereunder.

Transfer to register created under this Ordinance

(2) All trade marks duly registered under said Trade Marks Ordinance, 1900, shall, three months before the expiration of the first period of registration, be transferred to the register kept under the provisions of this Ordinance, and shall thereupon be subject to the provisions of this Ordinance in all respects as though they had been originally registered thereunder.

Inspection of register and granting of certified copies

8. The register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance and to such regulations as may be prescribed; and certified copies of any entry in any such register shall be given to any persons requiring the same, on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade marks. What marks are registrable as such

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark but a name, signature, or word or words other than such as fall within the description in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Provided always that any mark which has been registered as a distinctive mark in England under the Trade Marks Act, 1905, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Connexion of trade mark with goods

10. A trade mark must be registered for particular goods or classes of goods. The applicant shall in his application state goods included in one class only. If the applicant desires to register the same mark for goods falling in more than one class, he shall make a separate application in respect of each class and each of such applications shall be treated for all purposes as separate and distinct applications and the entries on the register in pursuance of such application shall for all purposes be deemed to relate to separate and distinct trade marks.

Coloured trade marks

11. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of

colour it shall be deemed to be registered for all colours.

Further restriction on registration

12. (1) It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered for any goods set forth and included in classes 23, 24, and 25, of the Third Part of the Schedule hereto unless such trade mark has been and is registered in the United Kingdom in respect of such goods.

REGISTRATION OF TRADE MARKS

Application for registration

13. (1) Any person claiming to be the proprietor of a trade mark may by himself or his agent apply to the Registrar for the registration thereof.

(2) The application must be made in the prescribed form, and must be accompanied by not less than three representations of the trade mark and by a stereotype block of such representations.

(3) The applicant must state the particular goods or classes of goods in connexion with which he desires his trade mark to be registered.

(4) The application must be left with or sent by post to the Registrar.

(5) The date of the delivery or receipt of the application shall be endorsed thereon and recorded in the Registrar's Office.

(6) When an applicant for the registration of a trade mark is out of the Colony at the time of making the application, he shall give the Registrar an address for service in the Colony and if he fails to do so the Registrar may refuse to proceed with the application until the address has been given.

Action in regard to application

14. (1) Subject to the provisions of this Ordinance the Registrar may refuse such application as aforesaid, or may accept it absolutely or subject to conditions, amendments, or modifications.

(2) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(3) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required,

hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

Disclaimer

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark or all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Advertisement of application

16. Every application for registration of a trade mark under this Ordinance and a representation of such mark shall, as soon as may be after its receipt, be advertised by the Registrar in the Gazette unless the Registrar refuses to entertain the application.

Opposition to Registration

17. (1) Any person may, within three months, or such further time, not exceeding nine months in all, as the Registrar may allow, of the advertisement of the application, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing and in duplicate, and shall include a statement of the ground of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within one month after the receipt of such notice, or such further time, not exceeding three months in all as the Registrar may allow, the applicant shall send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant send such counter-statement the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition,

and if such security is not given within fourteen days after such requirement was made or such further time as the Registrar may allow, the opposition shall be deemed to be withdrawn.

(5) If the person who gave notice of opposition duly gives such security as aforesaid, the Registrar shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the Court.

(6) Where the opponent is out of the Colony he shall, with the notice of opposition to registration, give the Registrar an address for service in the Colony.

Cases. How brought before the Court

18. (1) When a case stands for the determination of the Court under the provisions of the last preceding section, the Registrar shall require the applicant to make a written application to the Court for an order that, notwithstanding the opposition of which notice has been given, the registration of the trade mark be proceeded with by the Registrar, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

(2) The applicant shall thereupon make his application or take such other proceedings as aforesaid, within the period of one month above named or such further time as the Registrar may allow, and shall also within the like period give notice thereof to the Registrar.

(3) If the applicant shall fail to make such application or to take such other proceedings, of which failure the non-receipt by the Registrar of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Costs

19. The Court shall have power in proceedings under the last two preceding sections of this Ordinance to award to any party such costs as it may consider reasonable, and to direct how and by what parties they are to be paid.

Date of registration

20. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be the date of registration.

Certificate of registration

21. The Registrar shall have a seal and on the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Advertisement of application

22. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the Gazette. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Limit of time for proceeding with application

23. Where the registration of a trade mark is not completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant or to his agent (if any), treat the application as abandoned unless it is completed before the expiration of fourteen days from such notice or of such further time as the Registrar may in special cases permit.

IDENTICAL TRADE MARKS

24. Except by order of the Court or in the case of trade marks in use before the tenth day of January one thousand nine hundred, no trade mark shall be registered in respect to any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

25. Where each of several persons claims to be proprietor of the same trade marks or of nearly identical trade marks in respect to the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court or have been settled by agreement in a manner approved by him.

Concurrent user

26. In case of honest concurrent user or of other special circumstances which in the opinion of the Court make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or

place of user or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and transmission of trade mark

27. A trade mark when registered shall be assigned and transmitted only in connexion with the good will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that good will.

Apportionment of marks on dissolution of partnerships

28. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business and the good will of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

29. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks

30. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

31. When a person claiming to be proprietor of several trade marks for the same description of goods which, while

resembling each other in the material particulars thereof, yet differ in respect of:

(*a*) statements of the goods for which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality, or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks

32. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

DURATION AND RENEWAL OF REGISTRATION

Duration of Registration

33. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of registration

34. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed the "expiration of the last registration."

Procedure on expiry of period of registration

35. At a time not being less than two months nor more than three months before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which

a renewal of such registration may be obtained, and if such condition be not previously complied with the Registrar shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect, and if at the expiration of the time prescribed in that behalf such condition has not been duly complied with, the Registrar may remove such trade mark from the register subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade marks

36. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF APPLICATIONS, OR OF THE REGISTER

Registrar may correct formal errors in applications

37. The Registrar may, on request in writing, accompanied by the prescribed fee:

(*a*) Correct any clerical error in or in connection with an application for the registration of a trade mark, or

(*b*) Permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered.

Correction of register

38. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name:

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be

subject to appeal to the Court.

Entry in register of assignments

39. Subject to the provisions of this Ordinance, where a person becomes entitled by assignment, transmission, or other operation of the law to a registered trade mark, the Registrar shall, on request, made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered as proprietor of the trade mark in the register of trade marks, provided that any decision of the Registrar under this section shall be subject to appeal to the Court.

Application to alter registered trade mark

40. (1) The registered proprietor of any registered trade mark may apply to the Registrar for leave to add to or alter such mark in any manner, not substantially affecting the identity of the same, and the Registrar may refuse or grant leave on such terms as he may think fit; but any such refusal or conditional permission shall be subject to appeal to the Court.

Prescribed manner

(2) If leave be granted, the mark as altered shall be advertised in the prescribed manner; and the Registrar shall, on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Rectification of register by the Court

41. (1) The Court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from the register kept under this Ordinance or by any entry made without sufficient cause in any such register, or by any entry wrongfully remaining on the register, make such order for making, expunging, or varying the entry as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may in any proceedings under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(4) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(5) If any order of the Court rectifying the register is made, the Registrar shall on proof thereof and on payment of the prescribed fee cause the register to be altered in conformity with such order.

Trade Marks registered under previous enactments

42. No trade mark which is upon the register at the commencement of this Ordinance and which under this Ordinance is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Ordinance in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the Ordinance then in force.

Non-user of Trade Mark

43. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connexion with such goods and there has in fact been no *bona fide* user of the same in connexion therewith, or on the ground that there has been no *bona fide* user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of registered proprietor

44. Subject to the provisions of this Ordinance:

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipt for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

45. Subject to the provisions of section forty-seven of this Ordinance and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right

to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same or substantially the same trade mark in respect to the same goods no right of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be prima facie evidence of validity

46. In all legal proceedings relating to a registered trade mark (including applications under section forty-one of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years

47. In all legal proceedings relating to a registered trade mark (including applications under section forty-one of this Ordinance) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Ordinance, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section twelve of this Ordinance: Provided that nothing in the Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-six of this Ordinance.

No protection for unregistered trade marks

48. No person shall be entitled to institute any proceedings to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been in use for not less than three years prior to the commencement of such proceedings, and has been refused registration under this Ordinance. The Registrar may, on request, grant a cer-

tificate that such registration has been refused.

Action for infringement

49. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered and of any trade marks or get-up legitimately used in connection with such goods by other persons.

No interference with bona fide user of name or description of goods

50. No registration under this Ordinance shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business or the use by any person of any *bona fide* description of the character or quality of his goods.

Action for passing off goods

51. Nothing in this Ordinance shall be deemed to affect the rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificates of validity

52. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is declared in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Proceedings before the Court

53. Every application made to the Court under sections forty and forty-one and all proceedings thereunder shall be conducted in such manner as the Court may direct.

COSTS

54. In all proceedings before the Court under this Ordinance the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Certified copies to be admitted as evidence

55. Printed or written copies or extracts purporting to be

certified by the Registrar of or from any document, register, and other books filed or kept under this Ordinance in his office, shall be admitted in evidence in all Courts in this Colony, and all proceedings, without further proof or production of the originals.

Certificate of registration to be prima facie evidence

56. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Ordinance, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Applications may be sent by post

57. (1) Any application, notice or other document authorized or required to be left with, made, or given to the Registrar or to any other person under this Ordinance, may be sent by a registered letter through the post, and if so sent shall be deemed to have been so left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and registered at the Post Office.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of discretionary power by Registrar

58. Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Registrar may apply to Attorney General for directions

59. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Ordinance, apply to the Attorney General for directions in the matter.

POWER TO MAKE RULES AS TO FEES, ETC.

60. (1) The Governor in Council may from time to time make, alter or revoke rules, prescribe such forms, and generally do such things as he thinks expedient subject to the provisions of this Ordinance:

(*a*) for regulating the practice of registration under this Ordinance;

(*b*) for classifying goods for the purposes of registration of trade marks;

(*c*) for prescribing the fees payable in respect of applications and registrations and other matters under the Ordinance and the mode of payment of the same;

(*d*) generally for regulating all things by the said Ordinance placed under the direction or control of the Registrar;

(*e*) for altering or revoking the provisions contained in the schedules hereto.

(2) Any rules made in pursuance of this section shall be published in the Gazette and shall come into operation on the publication thereof, subject to disallowance by His Majesty.

(3) Unless and until they be altered or revoked under this section the provisions contained in the schedule hereto shall be and remain in force.

SPECIAL TRADE MARKS

Standardization, etc., of trade marks

61. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connexion with such goods, the Registrar may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connexion with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Registrar.

TRADE MARKS REGISTERED IN GREAT BRITAIN

Registration of British Trade Marks

62. (1) Any person who has registered a trade mark in Great Britain shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall have the same date as the application for registration in Great Britain; provided that his application is made within four months from his applying for protection in Great Britain.

Provided that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

(2) The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration of the trade mark.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance. Provided that any trade mark, the registration of which has been duly obtained in Great Britain, may be registered under this Ordinance.

Powers of Customs authorities to detain goods in certain cases

63. Any person who has duly registered his trade mark in respect of any goods in Great Britain may by himself, his agent or representative in the Colony, on giving notice in writing to the Chief Customs Officer, Supervisor or other proper Officer of Customs, that goods bearing a mark so nearly resembling his trade mark as to be well calculated to deceive are being imported into the Colony, cause the said goods to be detained by such Chief Customs Officer, Supervisor or other proper Officer of Customs until the rights of the matter have been determined according to law: Provided that any such informant shall reimburse to the Chief Customs Officer, Supervisor or other proper Officer of Customs all expenses and damages incurred in respect of such detention made on his information, and of any proceedings consequent on such detention.

Offences

64. (1) If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and on conviction shall be liable to penal servitude for a term of not more than seven years nor less than three years or to imprisonment for a term not exceeding two years, with or without hard labour, and such offence shall be tried on information.

(2) Any person who represents any trade mark as registered, which is not so, shall be guilty of an offence, and liable on conviction to a penalty not exceeding five pounds.

A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connexion with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

(3) If any person, without the authority of His Majesty, uses in connexion with any trade, business, calling or profes-

sion, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connexion with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and liable on conviction to a penalty not exceeding twenty pounds: Provided that nothing in this sub-section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

COSTS

Supreme Court. Jurisdiction and practice

65. In all appeals and in other matters, civil or criminal, so far as the same may be applicable the provisions of the Supreme Court Ordinance and the practice and procedure thereunder shall extend and apply to all proceedings under this Ordinance.

Offences. How tried

66. All offences under this Ordinance [with the exception of that contained in section sixty-four (1)] shall be tried and punishable before a Police Magistrate or a District Commissioner.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS

International arrangements. Priority registration

67. (1) If His Majesty is pleased by Order in Council to apply the provisions of section ninety-one of the Imperial Act entitled "The Patents and Designs Act, 1907,"* to the Colony, then any person who has applied for protection for any trade mark in any foreign state with the Government of which His Majesty has made an arrangement under the said section for mutual protection of trade marks, shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall take effect from the same date as the date of the application in such foreign State.

(2) Every application for the registration of a trade mark under this section shall be made within four months from the date of the application for protection in such foreign State.

(3) Nothing in this section contained shall entitle the pro-

* For provisions in question, see Great Britain: Patents and Designs Act, 1907, Section 91.

prietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

(4) The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration thereof.

(5) The application for the registration of a trade mark under this section shall be made in the same manner as an ordinary application under this Ordinance. Provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(6) The provisions of this section shall apply only in the case of those foreign States with respect to which His Majesty shall from time to time by Order in Council declare the provision of the aforesaid Section ninety-one of the Patents and Designs Act, 1907, to be applicable, and so long only in the case of each State as such Order continues in force with respect to that State.

Intercolonial Arrangements

68. (1) Whenever it appears to the Governor in Council that the legislature of any British Possession has made satisfactory provision for the protection in such Possession of trade marks registered in the Colony, the Governor in Council may by Order apply all or any of the provisions of the last preceding section of this Ordinance with such variations or additions as may seem fit to trade marks registered in such British Possession.

(2) An Order in Council under this section shall, from a date to be mentioned in the Order, take effect as if its provisions had been contained in this Ordinance, but the Governor in Council may revoke such Order.

GENERAL

Provisions as to Public Holidays

69. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document with, or paying any fee to the Registrar, shall fall on a Sunday or public holiday, it shall be lawful to leave such document or to pay such fee on the day next following such Sunday or public holiday or holidays, if two or more of them occur consecutively.

Infants, Lunatics, Etc.

70. If any person is, by reason of infancy, lunacy or other inability, incapable of making any affidavit or doing anything required or permitted by this Ordinance or by any rules made under the authority of this Ordinance, then the guardian of such incapable person, or if there be none, any person appointed by

any Court possessing jurisdiction in respect of the property of incapable persons upon the petition of any person on behalf of such incapable person, or any other person interested in the making of such affidavit or doing such thing, may make such affidavit, or an affidavit as nearly corresponding thereto as circumstances may permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall, for the purposes of this Ordinance, be as effectual as if done by the person for whom he is substituted.

REPEAL

Repeal of No. 2 of 1900

71. The Trade Marks Ordinance, 1900, is hereby repealed.

GREAT BRITAIN

TRADE MARKS ACT [OF AUGUST 11], 1905*

CHAPTER 15

Short Title

1. This Act may be cited as the Trade Marks Act, 1905.

Commencement of Act

2. This Act shall, save as otherwise expressly provided, come into operation on the first day of April one thousand nine hundred and six.

PART I

DEFINITIONS

3. In and for the purposes of this Act (unless the context otherwise requires):

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A "trade mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act:

"The register" shall mean the register of trade marks kept under the provisions of this Act:

A "registered trade mark" shall mean a trade mark which is actually upon the register:

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of court, and in other cases, prescribed by this Act or the Rules thereunder:

"The Court" shall mean (subject to the provisions for Scotland, Ireland, and the Isle of Man) His Majesty's High Court of Justice in England.

REGISTER OF TRADE MARKS

4. There shall be kept at the Patent Office for the purposes of this Act a book called the Register of Trade Marks, wherein

*Amended by Trade Marks Act [of December 23], 1919—which see—as to the following sections specified in Second Schedule: Sec. 12, subsections (2) and (4); Sec. 13; Sec. 14, subsections (4), (5), (6), and (10); Sec. 16; Sec. 21; Sec. 22; Sec. 23; Sec. 24; Sec. 33 (see Art. 11, instead of Second Schedule); Sec. 34; Sec. 41; Sec. 43; Sec. 62; and Sec. 63.

shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Comptroller-General of Patents, Designs, and Trade Marks, who is in this Act referred to as the Registrar.

Trust not to be entered on register

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of existing register

6. The register of trade marks existing at the date of the commencement of this Act, and all registers of trade marks kept under previous Acts, which are deemed part of the same book as such register, shall be incorporated with and form part of the register. Subject to the provisions of sections thirty-six and forty-one of this Act the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act.

Inspection of and extract from register

7. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade mark must be for particular goods

8. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the

character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Board of Trade or the Court, be deemed a distinctive mark:

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade marks

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on Registration

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

REGISTRATION OF TRADE MARKS

Application for registration

12. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Act, the Registrar may refuse such application, or may accept it absolutely or subject

to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of application

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration

14. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of

such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as herein-above provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar, or in the case of an appeal to the Board of trade the Board of Trade, shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal,

and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Board of Trade or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration

16. When an application for resignation of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Board of Trade otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration

17. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

Non-completion of registration

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS

19. Except by order of the Court or in the case of trade

marks in use before the thirteenth day of August one thousand eight hundred and seventy-five, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Register may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Board of Trade.

Concurrent user

21. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

Assignment and transmission of trade marks

22. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Apportionment of marks on dissolution of partnership

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall

be subject to appeal to the Board of Trade.

ASSOCIATED TRADE MARKS

24. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks

25. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

26. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods for which they are respectively used or proposed to be used; or

(b) statements of number, price, quality, or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks

27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for

any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION

Duration of registration

28. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration

29. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration

30. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark

31. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no bonâ fide trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF THE REGISTER

32. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name:

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Registration of assignments, etc.

33. Subject to the provisions of this Act where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

Alteration of registered trade mark

34. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Board of Trade. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of register

35. Subject to the provisions of this Act—

(1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit:

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register:

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to

the Court under the provisions of this section:

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Trade marks registered under previous Acts

36. No trade mark which is upon the register at the commencement of this Act and which under this act is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

Non-user of trade mark

37. A registered trade mark may, on the application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any bonâ fide intention to use the same in connection with such goods, and there has in fact been no bonâ fide user of the same in connection therewith, or on the ground that there has been no bonâ fide user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of registered proprietor

38. Subject to the provisions of this Act—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

39. Subject to the provisions of section forty-one of this Act and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to

the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be primâ facie evidence of validity

40. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the fact that a person is registered as proprietor of such trade mark shall be primâ facie evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years

41. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section eleven of this Act:

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-one of this Act.

Unregistered trade mark

42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the thirteenth of August one thousand eight hundred and seventy-five, and has been refused registration under this Act.

The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement

43. In an action for the infringement of a trade mark the court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of name, address, or description of goods

44. No registration under this Act shall interfere with any bonâ fide use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any bonâ fide description of the character or quality of his goods.

"Passing-off" action

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of validity

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to have notice of proceeding for rectification

47. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such state-

ment shall be deemed to form part of the evidence in the proceeding.

COSTS

Costs of proceedings before the Court

48. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Mode of giving evidence

49. In any proceeding under this Act before the Board of Trade or the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which it shall think it right so to do, the tribunal may (with the consent of the parties) take evidence vivâ voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken vivâ voce the Board of Trade or the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an Official Referee of the Supreme Court.

Sealed copies to be evidence

50. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to be evidence

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Certificate of Board of Trade to be evidence

52. (1) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the con-

trary is shown.

(2) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

PART II

Powers and Duties of Registrar of Trade Marks

Exercise of discretionary power by Registrar

53. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar

54. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Board of Trade, but the court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-five of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents

55. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Board of Trade be done by or to an agent of such party duly authorised in the prescribed manner.

Registrar may take directions of law officers

56. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to His Majesty's Attorney-General or Solicitor-General for England for directions in the matter.

Annual reports of Comptroller

57. The Comptroller General of Patents, Designs, and Trade Marks shall in his yearly report on the execution by or under him of the Patents, Designs, and Trade Marks Act, 1883, and Acts amending the same, include a report respecting the execution by or under him of this Act as though it formed a part of or was included in such Acts.

POWERS AND DUTIES OF BOARD OF TRADE

Proceedings before Board of Trade

58. All things required or authorised under this Act to be done by to or before the Board of Trade may be done by to or before the President or a secretary or an assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

Appeals to Board of Trade

59. Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer any such appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

Power of Board of Trade to make rules

60. (1) Subject to the provisions of this Act the Board of Trade may from time to time make such rules, prescribe such forms, and generally do such things as they think expedient—

(a) For regulating the practice under this Act:

(b) For classifying goods for the purposes of registration of trade marks:

(c) For making or requiring duplicates of trade marks and other documents:

(d) For securing and regulating the publishing and selling or distributing in such manner as the Board of Trade think fit, of copies of trade marks and other documents:

(e) Generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar, or of the Board of Trade.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Act.

(3) Before making any rules under this section the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Board consider most expedient, so as to enable persons affected to make representations to the Board before the rules are finally settled.

(4) Any rules made in pursuance of this section shall be forthwith advertised twice in the Trade Marks Journal, and shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament.

(5) If either House of Parliament within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

FEES

61. There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade.

SPECIAL TRADE MARKS

Standardization, etc., trade marks

62. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade.

SHEFFIELD MARKS

63. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:

(1) The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Act called the Sheffield register), kept by them at the date of the commencement of this Act, and, save as otherwise provided by this Act, such register shall for all purposes form part of the register:

(2) The Cutlers' Company shall, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks which

shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in such register before the passing of this Act:

(3) An application for registration of a trade mark used on metal goods shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

(4) Every application so made to the Cutlers' Company shall be notified to the Registrar in the prescribed manner, and, unless the Registrar within the prescribed time gives notice to the Cutlers' Company of any objection to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5) If the Registrar gives notice of an objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may in the prescribed manner appeal to the Court:

(6) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the Registrar, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the Registrar on that day:

(7) The provisions of this Act, and of any rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section (and notwithstanding anything in any Act relating to the Cutlers' Company), apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the Registrar, the Patent Office, and the Register of Trade Marks respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the Register by the Cutlers' Company.

(8) When the Registrar receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:

(9) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act

may, in the prescribed manner, appeal to the Court:

(10) For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal:

(11) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the Registrar.

COTTON MARKS

64. (1) The Manchester Branch of the Trade Marks Registry of the Patent Office (herein-after called "the Manchester Branch") shall be continued according to its present constitution. A chief officer of the Manchester Branch shall be appointed who shall be styled "the Keeper of Cotton Marks," and shall act under the direction of the Registrar. The present keeper of the Manchester Branch shall be the first Keeper of Cotton Marks.

(2) As regards cotton goods which have hitherto constituted classes 23, 24, and 25, under the classification of goods under the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Register of Trade Marks for all such goods, except such as may be prescribed, shall be called "the Manchester Register," and a duplicate thereof shall be kept at the Manchester Branch.

(3) All applications for registration of trade marks for such cotton goods in the said classes (herein-after referred to as "cotton marks") shall be made to the Manchester Branch.

(4) Every application so made to the Manchester Branch shall be notified to the Registrar in the prescribed manner, together with the report of the Keeper of Cotton Marks thereon, and unless the Registrar, after considering the report and hearing, if so required, the applicant, within the prescribed times gives notice to the Keeper of Cotton Marks of objection to the acceptance of the application, it shall be advertised by the Manchester Branch and shall be proceeded with in the prescribed manner.

(5) If the Registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved may in the prescribed manner appeal to the Court or the Board of Trade, at the option of the applicant.

(6) Upon the registration of a trade mark in the Manchester Register the Keeper of Cotton Marks shall upon notice thereof from the Registrar thereupon enter the mark in the

duplicate of the Manchester Register, and such registration shall bear date as of the day of application to the Manchester Branch, and shall have the same effect as if the application had been made to the Registrar on that day.

(7) When any mark is removed from or any cancellation or correction made in the Manchester Register notice thereof shall be given by the Registrar to the Keeper of Cotton Marks, who shall alter the duplicate register accordingly.

(8) For the purpose of all proceedings in relation to trade marks entered in the Manchester Register a certificate under the hand of the Keeper of Cotton Marks shall have the same effect as a certificate of the Registrar.

(9) In every application for registration of a cotton mark, if such mark has been used by the applicant or his predecessors in business prior to the date of application, the length of time of such user shall be stated on the application.

(10) As from the passing of this Act—

(a) In respect of cotton piece goods and cotton yarn no mark consisting of a word or words alone (whether invented or otherwise) shall be registered, and no word or words shall be deemed to be distinctive in respect of such goods:

(b) In respect of cotton piece goods no mark consisting of a line heading alone shall be registered, and no line heading shall be deemed to be distinctive in respect of such goods:

(c) No registration of a cotton mark shall give any exclusive right to the use of any word, letter, numeral, line heading, or any combination thereof.

(11) The right of inspection of the Manchester Register shall extend to and include the right to inspect all applications whatsoever that have been since the passing of the Trade Marks Registration Act, 1875, and hereafter shall have been made to the Manchester Branch in respect of cotton goods in classes 23, 24, and 25, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled, or pending.

(12) The Keeper of Cotton Marks shall, on request, and on production of a facsimile of the mark, and on payment of the prescribed fee, issue a certified copy of the application for registration of any cotton mark, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars he may deem necessary.

(13) As regards any rules or forms affecting cotton marks which are proposed by the Board of Trade to be made, the draft of the same shall be sent to the Keeper of Cotton Marks and also to the Manchester Chamber of Commerce. And the said Keeper, and also the said Chamber, shall, if they or either

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of them so request, be entitled to be heard by the Board of Trade upon such proposed rules before the same are carried into effect.

(14) The existing practice whereby the keeper of the Manchester Branch consults the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce upon questions of novelty or difficulty arising on applications to register cotton marks shall be continued by the Keeper of Cotton Marks.

INTERNATIONAL AND COLONIAL ARRANGEMENTS

65. The provisions of sections one hundred and three and one hundred and four of the Patents, Designs, and Trade Marks Act, 1883 (as amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1885),* relating to the registration of trade marks both as enacted in such Acts and as applied by any Order in Council made thereunder, shall be construed as applying to trade marks registrable under this Act.

OFFENCES

Falsification of Entries in Register

66. If any person makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Penalty on Falsely Representing a Trade Mark as Registered

67. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

ROYAL ARMS

Unauthorised Assumption of Royal Arms

68. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His

* Repealed by Patents and Designs Act, 1907, Sec. 91—which see—of the latter Act being substantially the same as the provisions repealed.

Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

COURTS

General Saving for Jurisdiction of Courts

69. The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to trade marks; and with reference to any such proceedings in Scotland the term "the Court" shall mean the Court of Session; and with reference to any such proceedings in Ireland the term "the Court" shall mean the High Court of Justice in Ireland.

Isle of Man

70. This Act shall extend to the Isle of Man, and—

(1) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those courts:

(2) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour and with or without a fine not exceeding one hundred pounds, at the discretion of the Court:

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction of Lancashire Palatine Court

71. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in

relation to trade marks, the registration whereof is applied for in the Manchester Branch, have the like jurisdiction under this Act as His Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly:

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

Offences in Scotland

72. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

REPEAL; SAVINGS

Repeal and Saving for Rules, Etc.

73. The enactments described in the schedule to this Act are repealed to the extent mentioned in the third column, but this repeal shall not affect any rule, table of fees, or classification of goods made under any enactment so repealed, but every such rule, table of fees, or classification of goods shall continue in force as if made under this Act until superseded by rules, tables of fees, or classification under this Act.

Application of 46 & 47 *Vict. c.* 57 *ss.* 82-84

74. The provisions of sections eighty-two to eighty-four of the Patents, Designs, and Trade Marks Act, 1883,* as amended by any subsequent enactment, shall continue to apply with respect to the administration at the Patent Office of the Law relating to the registration of trade marks, and shall accordingly be construed as if this Act formed part of that Act.

TRADE MARKS ACT [OF DECEMBER 23], 1919

CHAPTER 79

PART I

REGISTRATION OF CERTAIN TRADE MARKS NOT REGISTRABLE UNDER PRINCIPAL ACT

Division of Register of Trade Marks Into Two Parts

1. (1) The register of trade marks (including the Manchester Register) kept under the Trade Marks Act, 1905 (hereinafter referred to as the principal Act), shall be divided into

*Sections 82 to 84, in question, follow.

two parts to be called respectively Part A and Part B.

(2) Part A of the register shall comprise all trade marks entered in the register of trade marks at the commencement of this Act and all trade marks which after the commencement of this Act may be registered under the provisions of the principal Act.

(3) Part B shall comprise all trade marks registered under this Part of this Act, and all trade marks entered on or removed thereto under this Act.

Registration of Trade Marks in Part B

2. (1) Where any mark has for not less than two years been bona fide used in the United Kingdom upon or in connection with any goods (whether for sale in the United Kingdom or exportation abroad), for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale, the person claiming to be the proprietor of the mark may apply in writing to the registrar in the prescribed manner to have the mark entered as his registered trade mark in Part B of the register in respect of such goods.

(2) The registrar shall consider every such application for registration of a trade mark in Part B of the register, and if it appears to him after such search, if any, as he may deem necessary, that the application is inconsistent with the provisions of section eleven or section nineteen of the principal Act, or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to conditions, amendments or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application.

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark under the provisions of the principal Act.

(5) Every such application shall, if accepted, be advertised in accordance with the provisions of the principal Act.

(6) A mark may be registered in Part B, notwithstanding

any registration in Part A by the same proprietor of the same mark or any part or parts thereof.

Application of Certain Provisions of Principal Act to Part B Trade Marks

3. The provisions of the principal Act as amended by this Act, with the exception of those set out in the First Schedule to this Act, shall, subject to the provisions of this Part of this Act, apply in respect of trade marks to which this Part of this Act applies as if they were herein re-enacted and in terms made applicable to this Part of this Act.

Effect of Registration in Part B

4. The registration of a person as the proprietor of a trade mark in Part B of the register shall be prima facie evidence that that person has the exclusive right to the use of that trade mark, but in any action for infringement of a trade mark entered in Part B of the register, no injunction, interdict or other relief shall be granted to the owner of the trade mark in respect of such registration, if the defendent establishes to the satisfaction of the court that the user of which the plaintiff complains is not calculated to deceive or to lead to the belief that the goods the subject of such user were goods manufactured, selected, certified, dealt with or offered for sale by the proprietor of the trade mark.

Power to Treat Applications for Registration in Part A as Applications for Registration in Part B

5. If any person applies for the registration of a trade mark under the principal Act in Part A of the register, the registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the register under this Part of this Act and deal with the application accordingly.

PART II

PROVISIONS FOR THE PREVENTION OF ABUSES OF TRADE MARKS

Removal from Register of Word Trade Marks Used as Names of Articles

6. (1) Where in the case of an article or substance manufactured under any patent in force at or granted after the passing of this Act, a word trade mark registered under the principal Act or Part I of this Act is the name or only practicable name of the article or substance so manufactured, all rights to the exclusive use of such trade mark, whether under the common law or by registration (and notwithstanding the provisions of

section forty-one of the principal Act), shall cease upon the expiration or determination of the patent, and thereafter such word shall not be deemed a distinctive mark, and may be removed by the Court from the register on the application of any person aggrieved.

(2) No word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark, and any such word now or hereafter on the register may, notwithstanding section forty-one of the principal Act, be removed by the court from the register on the application of any person aggrieved:

Provided that—

(a) the provisions of this subsection shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable practicable name open to the public use; and

(b) in the case of marks registered before the passing of this Act, no application under this section for the removal of the mark from the register shall be entertained until after the expiration of four years from the passing of this Act.

(3) The power to remove a trade mark from the register conferred by this section shall be in addition to and not in derogation of any other powers of the court in respect of the removal of trade marks from the register.

(4) The provisions contained in Part III of this Act authorising applications for the rectification of the register to be made in the first instance to the registrar instead of to the court shall apply to applications under this section.

PART III

General Amendments of Principal Act

Amendment of the Law As to Registrable Trade Marks

7. In paragraph (5) of section nine of the principal Act (which defines the particulars which registrable trade marks must contain or consist of) for the words "except by order of the Board of Trade or the court be deemed a distinctive mark," there shall be substituted the words "be registrable under the provisions of this paragraph, except upon evidence of its distinctiveness."

Appeals

8. (1) All appeals from the decisions of the registrar under section fourteen of the principal Act shall be made to

the court, and an appeal shall not lie from any such decision to the Board of Trade, and accordingly that section shall have effect, subject to the modifications set forth in the Second Schedule to this Act:

Provided that nothing in this subsection shall affect any appeal which may be pending at the commencement of this Act.

(2) In any appeal from the decision of the registrar to the court under the principal Act or this Act the court shall have and exercise the same discretionary powers as under the principal Act or this Act are conferred upon the registrar.

Rectification of Register

9. (1) Any application for the rectification of the register or the removal of any trade mark from the register in respect of any goods which, under section thirty-five or section thirty-seven of the principal Act or under Part II of this Act, is to be made to the court, may, at the option of the applicant, be made in the first instance to the registrar:

Provided that no such application shall be made otherwise than to the court where an action concerning the trade mark in question is pending.

(2) The registrar may, at any stage of the proceedings, refer any such application to the court or he may, after hearing the parties, determine the question between them, subject to appeal to the court.

(3) In any proceedings for the rectification of the register under this Act or under section thirty-five of the principal Act as amended by this section the court or the registrar shall, in addition to the powers conferred by that section as so amended, have power to direct a trade mark entered in Part A of the register to be removed to Part B of the register.

Costs

10. In all proceedings before the registrar under the principal Act or this Act the registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of court.

Registration of Assignments

11. For section thirty-three of the principal Act, the following section shall be substituted:

"33. (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, he shall make application to the registrar to register his title, and the registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprie-

tor of the trade mark, and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission, or other instrument affecting the title. Any decision of the registrar under this section shall be subject to appeal to the court.

"(2) Except in cases of appeals under this section and applications made under section thirty-five of this Act, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsection (1) aforesaid shall not be admitted in evidence in any court in proof of the title to a trade mark unless the court otherwise directs."

Minor Amendments of Principal Act

12. The amendments specified in the second column* of the Second Schedule to this Act, which relate to minor details, shall be made in the provisions of the principal Act specified in the first column of that schedule.

13. (1) This Act may be cited as the Trade Marks Act, 1919, and the Trade Marks Acts, 1905 and 1914, and so much of the Patents and Designs Acts, 1907 to 1919, as relates to trade marks, and this Act may be cited together as the Trade Marks Act, 1905 to 1919.

(2) This Act shall be construed as one with the principal Act and shall come into operation on the first day of April, nineteen hundred and twenty.

SCHEDULES

First Schedule

Section 3

Provisions of Principal Act not Applied

Section 1. Short title.
Sec. 2. Commencement of Act.
Sec. 6. Incorporation of existing register.
Sec. 9. Registrable trade marks.
Sec. 12. Application for registration.
Sec. 14. (9) Modification of trade mark on appeals.
Sec. 15. Disclaimers.
Sec. 24. Associated trade marks.
Sec. 25. Combined trade marks.
Sec. 27. Assignment and user of associated trade marks.
Sec. 31. Status of unrenewed trade marks.
Sec. 36. Trade marks registered under previous Acts.

*This expression has reference to the tabular form in which the Second Schedule was originally drawn up.

SEC. 39. (except proviso). Rights of proprietor of trade mark.

SEC. 41—down to the words "against the provisions of section eleven of this Act." Registration to be conclusive after seven years.

SEC. 42. Unregistered trade mark.

SEC. 62. Standardization, &c., trade marks.

SEC. 73. Repeal and saving for rules, &c.

SECOND SCHEDULE

Sections 8 *and* 12

MINOR AMENDMENTS OF PRINCIPAL ACT

Section Amended; Nature of Amendment

SECTION 12. At the end of subsection (2) there shall be inserted the following words "or to such limitations if any, as to mode or place of user or otherwise as he may think right to impose."

In subsection (4), after the words "modifications, if any," shall be inserted the words "or to what limitations, if any, as to mode or place of user or otherwise."

SEC. 13. After the word "conditions" in both places where it occurs, there shall be inserted the words "and limitations."

At the end of the section there shall be inserted the words "Provided that an application under the provisions of subsection (5) of section nine of this Act may be advertised by the Registrar on receipt of such application and before acceptance."

SEC. 14. In subsection (4), after the word "conditions" there shall be inserted the following words "or what limitations as to mode or place of user or otherwise."

In subsection (5) the words "or with the consent of the parties, to the Board of Trade" shall be repealed.

In subsection (6) the words "the Board of Trade or" and "as the case may be" shall be repealed; and after the words "conditions, if any" there shall be inserted the words "or what limitations, if any, as to mode or place of user or otherwise."

Subsection (10) shall be repealed.

SEC. 16. After the words "the registrar shall" there shall be inserted the words "unless the mark has been accepted in error or."

SEC. 21. After the word "court" there shall be inserted the words "or registrar" in each case.

Delete the words "as it may think it right to impose" and insert "as the court or the registrar, as the case may be, may think it right to impose."

SEC. 22. At the end of the section there shall be added the following words "and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of section twenty-one of this Act, subject to such conditions and limitations as may be imposed under that section."

SEC. 23. After the words "modifications, if any," there shall be inserted the words "and to such limitations, if any, as to mode or place of user."

SEC. 24. After the words "registration of a trade mark" there shall be inserted the words "identical with or."

SEC. 34. After the word "terms" there shall be inserted the words "and subject to such limitations as to mode or place of user."

SEC. 41. In the proviso, after the words "anterior to the user" there shall be inserted the words "or registration, whichever is the earlier."

SEC. 43. For section forty-three the following section shall be substituted: "In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get up legitimately used by other persons."

SEC. 62. For the words "Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying," there shall be substituted the words "Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy or other characteristic of any goods by mark used upon or in connection with such goods, the Board of Trade, if and so long as they are satisfied that such association or person is competent to certify as aforesaid, may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying."

SEC. 64. Subsection (10) (a) shall be repealed.

In subsection (10) (c) the word "word" shall be omitted.

MERCHANDISE MARKS ACT [OF AUGUST 23] 1887

CHAPTER 28

Short Title

1. This Act may be cited as the Merchandise Marks Act, 1887.

Offences As to Trade Marks and Trade Descriptions

2. (1) Every person who—

(a) forges any trade mark; or

(b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(d) applies any false trade description to goods; or

(e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or

(f) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently;

be guilty of an offence against this Act.

(3) Every person guilty of an offence against this Act shall be liable—

(i) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a

fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

(iii) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

Definitions

3. (1) For the purposes of this Act—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable:

The expression "trade description" means any description, statement, or other indication, direct or indirect,

(a) as to the number, quantity, measure, gauge, or weight of any goods, or

(b) as to the place or country in which any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication

of any of the above matters, shall be deemed to be a trade description within the meaning of this Act:

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate:

The expression "name" includes any abbreviation of a name.

(2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

(a) are not a trade mark, or part of a trade mark, and

(b) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and

(c) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

Forging Trade Mark

4. A person shall be deemed to forge a trade mark who either—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying Marks and Descriptions

5. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

(a) applies it to the goods themselves; or

(b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

Exemption of Certain Persons Employed in Ordinary Course of Business

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging,

or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(a) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b) That he took reasonable precautions against committing the offence charged; and

(c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Application of Act to Watches

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall primâ facie be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Mark On Watch Case

8. (1) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration

declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council.

(2) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.

(3) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

Trade Mark, How Described in Pleading

9. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules As To Evidence

10. In any prosecution for an offence against this Act,—

(1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2) In the case of imported goods, evidence of the port of shipment shall be primâ facie evidence of the place or country in which the goods were made or produced.

Punishment of Accessories

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanor, shall be guilty of that misdemeanor as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanor had been there committed.

Search Warrant

12. (1) Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Extension of 22 & 23 *Vict. c.* 17. *to Offences Under This Act*

13. The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments

for "certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

Costs of Defence or Prosecution

14. On any prosecution under this Act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limitation of Prosecution

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition On Importation

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:

(1) All such goods, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices,

and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(6) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of Her Majesty's Treasury.

(7) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."

(9) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

(10) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder.

Implied Warranty on Sale of Marked Goods

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Act as to False Description Not to Apply in Certain Cases

18. Where, at the passing of this Act, a trade description

is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings

19. (1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who *bonâ fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False Representation as to Royal Warrant

20. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Application of Act to Scotland

21. In the application of this Act to Scotland the following modifications shall be made:—

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "court of summary jurisdiction" means the

Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

Application of Act to Ireland

22. In the application of this Act to Ireland, the following modifications shall be made:—

The expression "Summary Jurisdiction Acts," means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

The expression "court of summary jurisdiction" means justices acting under those Acts.

Repeal of 25 & 26 *Vict. c.* 88

23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect—

(a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor

(b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor

(c) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

THE PATENTS, DESIGNS, AND TRADE MARKS ACT [OF AUGUST 25], 1883

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PART V. GENERAL

PATENT OFFICE AND PROCEEDINGS THEREAT

Patent Office

82. (1) The Treasury may provide, for the purposes of this Act, an office with all requisite buildings and conveniences which shall be called, and is in this Act referred to as, the Patent Office.

(2) Until a new patent office is provided, the offices of the Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3) The Patent Office shall be under the immediate control of an officer called the Comptroller-General of Patents, Designs, and Trade Marks, who shall act under the superintendence and direction of the Board of Trade.

(4) Any act or thing directed to be done by or to the Comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorized by the Board of Trade.

Officers and Clerks

83. (1) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the Comptroller-General of Patents, Designs, and Trade Marks, and so many examiners and other officers and clerks with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of Patent Office

84. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

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PATENTS AND DESIGNS ACT [OF AUGUST 28], 1907

CHAPTER 29

AN ACT TO CONSOLIDATE THE ENACTMENTS RELATING TO PATENTS FOR INVENTIONS AND THE REGISTRATION OF DESIGNS AND CERTAIN ENACTMENTS RELATING TO TRADE MARKS

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PART III

GENERAL

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International and Colonial Arrangements

91. (1) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of . . . trade marks, then any person who has applied for protection for any . . . trade mark in that state shall be entitled . . . to registration of his . . . trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the . . . registration shall have the same date of

the application in the foreign state.

Provided that—

(a) The application is made, in the case of a . . . trade mark within four months, from the protection in the foreign state; and

(b) Nothing in this section shall entitle the . . . proprietor of the . . . trade mark to recover damages for infringements happening prior to the actual date on which his . . . trade mark is registered in this country.

(2) The . . . registration of a . . . trade mark shall not be invalidated—

. . . . . .

(c) In the case of a trade mark, by reason only of the use of the trade mark, in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.

(3) The application for . . . the registration of a . . . trade mark under this section must be made in the same manner as an ordinary application under . . . the Trade Marks Act, 1905: Provided that—

. . . . . .

(b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Trade Marks Act, 1905.

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only as the Order in Council continues in force with respect to that state.

(5) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of . . . trade marks . . . registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order.

GREECE

LAW OF FEBRUARY 10/22, 1893

ARTICLE 1. Any distinctive mark of the products of industry, agriculture, stock-raising, and, in general, of commerce is considered as a mark of manufacture or of commerce.

The mark may be affixed to the objects themselves or on their wrappings; the name of a tradesman, merchant, or business establishment shall be considered as such.

ART. 2. The use of a mark is optional; but no one has the right to legal protection in the exclusive use of a mark if he has not deposited three copies thereof and a typographic cut in the archives of the Civil Tribunal of First Instance of the district in which he has his principal establishment or, in default of this, an establishment and his domicile.

The legal protection is assured for ten years, counting from the day of the deposit; as result of a new deposit with like formalities this period shall be extended for a new term of ten years.

He that has publicly made use of a mark, first and for one year without interruption, alone has the right to make deposit thereof.

For each deposit there shall be collected a fee of sixty drachmas, gold.

ART. 3. Minutes of each deposit shall be entered in a register kept for this purpose; this record shall be numbered and signed by the depositor or by his attorney, authorized by a special power, and by the Registrar.

The record shall mention the day and the hour of the deposit and the class of industry or trade for which the mark is intended; the power of attorney itself and the receipt of the Treasury showing the payment of the fee prescribed in the preceding article shall be annexed thereto.

A stamp of two drachmas shall be affixed to the record.

The records of deposit shall be at the disposition of whoever wishes to consult them or request a copy therefrom.

One of the copies deposited shall be preserved in the archives of the tribunal; the second, endorsed by the Registrar, shall be affixed to a copy on unstamped paper of the record, and sent immediately to the depositor or to his attorney; the third, accompanied by a copy also on unstamped paper of the record and by a *cliché,* deposited in the archives of the Civil

Tribunal of First Instance of the School of Industrial Arts.

ART. 4. The Director shall be obliged to enter the deposit of the mark in special registers, according to the class of industry or trade; the name of the depositor shall be inscribed in an alphabetic index kept for public inspection; the mark shall be exposed in a public room; and a declaration of the deposit, as well as a summary description of the product and of the mark, shall be inserted in the *Official Journal* with a typographic reproduction thereof, and this within a maximum period of two weeks, dated from the day of the remittance of the documents to the Director of the School of Industrial Arts.

ART. 5. Property in marks of manufacture and of commerce may not be assigned except with the right of exploitation of the product. This transfer shall have no effect as to third parties until after the deposit and publication of an extract of the deed that shall verify it, under formalities prescribed by Arts. 2 and 4.

This transfer shall likewise be noted on the margin of the record of the deposit of the mark, and this annotation shall be invested with the signatures required by Art. 3. It shall be subject to a fee of thirty drachmas, gold, whereof the receipt shall be affixed to the record.

ART. 6. He shall be subject to imprisonment for six months at most, and a fine not exceeding one thousand drachmas, or either of these penalties:

1. That shall have counterfeited a mark or made fraudulent use of a counterfeited mark;
2. That shall have fraudulently affixed to one of his products a mark belonging to another;
3. That, without counterfeiting a mark, shall have made an imitation thereof of a nature to deceive buyers, or shall have made use of such a mark;
4. That shall knowingly have sold or put in circulation an object invested with a counterfeited mark.

Public prosecution resulting from offences contemplated by the present article may not be brought until ten days after the insertion in the *Official Journal* provided by Art. 4, and for an act subsequent to the expiration of this term.

However, the depositor may, from the day following the deposit, prosecute by a civil action for the judicial recognition of his right to the exclusive use to the mark, and then offences committed subsequent to the notice of the civil action may be prosecuted even before the publication in the *Official Journal*.

ART. 7. The penalties above provided may be doubled in case of repetition, if this occurs within the five years that follow

the first offence.

ART. 8. The trial court shall order that every judgment be inserted, at the expense of the party condemned, in two journals of the capital, if the offence has been committed at Athens, or, if not, in one journal at Athens and in another at the place where the offence was committed.

ART. 9. The Court shall order always, even in case of acquittal, the destruction of the counterfeited marks seized; if the mark cannot be destroyed without injuring the object to which it is affixed, the Court may order the destruction of the object itself, totally or partially.

ART. 10. In addition to the penalties above provided, whoever has infringed the present law shall be held to repair the damage that he has caused; merchandise bearing a counterfeited mark and the utensils having served to perpetrate the offence may be awarded by the court to the aggrieved party if the condemned party is the owner thereof, and if the injured party has begun action for damages and accepted the said articles, on summary appraisement made by the court, for all or part of the claim.

ART. 11. Public prosecution cannot be taken except on the complaint of the injured party.

ART. 12. The deposit of a mark that shall not have been made in conformity with the present law shall be, on application of any interested third party, declared null by the court by whose clerk it may have been effected. The extract of the judgment shall be inscribed at the instance of the applicant, on the margin of the record, within a period of one month, dating from the day on which it shall have acquired the force of *res adjudicata,* under penalty of a fine of twenty-five drachmas, at least.

All private suits resulting from an action based on the present law shall be judged by tribunals of first instance as commercial matters when they shall not have been lodged simultaneously with the public action before the correctional tribunal.

ART. 13. Foreigners or Greeks that carry on outside of Greece an industry or business shall enjoy the advantages of the present law if, in the country where their establishments are situated, there exist a law protecting marks of manufacture and commerce and a diplomatic convention providing reciprocity for Greek marks.

However, to enjoy the benefit of this protection in Greece, it shall be necessary, aside from the deposit of the mark:

1. To produce a certificate from the competent, local authority, legalized by the Hellenic consul, evidencing fulfillment of the formalities of deposit prescribed in the country in which

the establishment of the applicant shall be located;

2. To elect domicile at Athens by notarial deed;

3. To declare in writing that the depositor submits himself to the jurisdiction of the courts of Athens.

The effects of the protection in Greece shall cease if the term of protection accorded by law become expired, or if the diplomatic reciprocity convention cease to be effective. In no case shall foreigners or Greeks established abroad have, in Greece, for their marks of manufacture or of commerce rights more extended than those that they have in the country where their establishments are situated.

ART. 14. Compensation shall be paid by the Public Treasury to the clerks of the tribunals of first instance in the sum of two drachmas for each record of deposit, and to the Secretary of the School of Industrial Arts likewise in the sum of two drachmas for each mark deposited. These employees shall submit quarterly reports, viséd by their hierarchic superiors, to the Minister of the Interior, who shall give them orders for payment.

ART. 15. Any provision contrary to the present law is repealed.

ART. 16. A Royal Ordinance shall regulate, with fuller details, the deposit, the publication and the exhibition of marks, as well as whatever concerns the execution of the present law.

GRENADA

This Colony has no proper trade mark law.

Merchandise Marks Ordinance, 1889, No. 9, substantially like the British Merchandise Marks Act.

GUATEMALA

DECREE NO. 441, OF MAY 13, 1899

ARTICLE 1. There shall be considered as commercial and industrial marks: Denominations of objects, or names of persons, under a particular form, emblems, monograms, engravings or prints, seals, vignettes and reliefs, letters and numbers with special design, containers or wrappers of objects, and any other sign by which it is desired to distinguish the productions of a factory or the goods of a business.

ART. 2. The inscription of a trade mark shall have as its effect the concession to the possessor of the exclusive right to affix it to the respective goods on their wrappers and containers, as well as that of printing it on his advertisements, prospectuses, commercial letters, and other similar papers.

ART. 3. There shall not be considered as manufacturers', commercial and industrial marks:

1) Letters, words, names, or distinctives that are or should be used by the State alone;

2) The form given to the product by the manufacturer;

3) The color of the products;

4) Terms or locutions that have passed into general use;

5) Designations usually employed to indicate the nature of the products or the class to which they belong; and

6) Designs or expressions contrary to morality.

ART. 4. The absolute ownership of the mark, as well as the right to oppose the use of any other that might, directly or indirectly, produce confusion between the products, shall belong to the manufacturer or merchant that has fulfilled the requisites demanded by this law.

ART. 5. The exclusive ownership of a mark shall be acquired only with reference to industries of the same kind.

ART. 6. The use of the mark is optional. Nevertheless it may be compulsory when necessities of public expedience so require.

ART. 7. The ownership of a mark shall pass to the heirs, and may be also transferred by contract or by disposition of last will and testament, provided that the formality referred to in Art. 10 of this law shall have been fulfilled.

Unless the transfer is recorded in the Register, the successor can not make valid the absolute ownership to which Art. 4 refers.

ART. 8. The assignment or sale of the establishment shall include that of the mark, save stipulation to the contrary, and the assignee shall have the right to use the mark that designates it, even though it be a name, in the same manner as the assignor had, without other restrictions than those expressly imposed in the deed of sale or assignment.

ART. 9. The deed of assignment of a mark must be recorded in the office in which it is registered, in order to acquire the rights that this law confers for registered marks.

ART. 10. There shall only be considered as a registered mark, for the effects of the ownership that this law accords, that for which the Office shall have made the corresponding registration.

ART. 11. The protection of the rights of the manufacturer, tradesman, or industrial, with regard to the exclusive use of the mark, shall last only for ten years, which may be extended for other equal periods by again complying with the formalities established and paying in each case the fee fixed by Art. 22.

ART. 12. Individuals may adopt for the products of their factories or industries permitted by law the marks and proper names and distinctives that they may deem proper, except the following:

1) The coat-of-arms of the Republic, or of any other country, except when there be presented authorization of the respective Government;

2) The portrait of any person other than the manufacturer, tradesman, or industrial, without his previous consent; and

3) Distinctives that admit of confusion with other registered marks.

ART. 13. Any person that desires to obtain the ownership of a mark of manufacture, of commerce, or industry, must apply for it before the Secretariat of State in the Bureau of Fomento (Public Industry).

ART. 14. The application for obtaining a mark shall be drawn up on stamped paper of the corresponding class and must be accompanied:

1) By two facsimiles of the mark or of the distinctive sign of which it is desired to make use;

2) By a description, in duplicate, of the mark or sign, if it is a matter of figures or emblems, it being necessary to indicate the class of objects for which it is intended, and whether it is to be applied to the products of a factory, or to objects of commerce;

3) By a receipt in which there is evidenced the payment in the National Treasury of the fee stipulated in Art. 22, which

shall be returned in case the registration of the mark is refused; and

4) By a formal power of attorney, in case the interested party does not appear personally.

ART. 15. If the mark should contain any countersign, and the interested parties should desire to keep it secret, they shall make a statement or description of said countersign on a sheet of paper which they shall inclose in a sealed envelope that only the respective Judge may open in case of litigation or criminal accusation. Said sheet of paper shall remain deposited in the Trade Mark Office.

ART. 16. At the foot of each application a statement shall be made of the day and hour on which it is presented, this statement to be signed and sealed by the sub-secretary of the Bureau; and the applicant shall have the right to ask for a receipt of the application, with annotation of the hour at which he filed it.

ART. 17. The right of priority as regards the ownership of a mark shall be decided in accordance with the day and hour at which the application was filed at the Office, and if there is a coincidence in the hour, attention shall then be paid, for this purpose, to the date of the application (*memorial*).

ART. 18. The application for the ownership of a mark shall be published for one month in the *Periódico Oficial,* and shall then be referred for consideration and report to the Trade Mark Office. If no opposition is made, and the report is not unfavorable, government decree shall be issued ordering the registration of the mark. To such end, the original record and the facsimile shall then be sent to the Trade Mark Office, in order that the registration be made in proper form, that a notice of the procedure, the number, folio, and book of the Register be written at the foot of the original record, and that all the papers of the case be preserved in the archives. The certificate of the inscription, accompanied by one of the copies of the registered mark, shall serve the owner as evidence of his ownership of the respective mark.

ART. 19. In case of opposition, or of a report unfavorable to the application, the Government Attorney shall be heard, and then the proper decision shall be given, unless there be new formalities to fulfill.

ART. 20. All disputes between private parties regarding the right to the use of a mark, or the counterfeiting or imitating the same, shall fall under the jurisdiction of the courts.

ART. 21. The Directorate-General of Statistics shall have also in its charge the Bureau of Registration of Marks. With

such object it shall be its duty to keep for this purpose all the necessary books conveniently arranged, numbered, and paged. The books of registration shall be arranged in three columns—one to paste or delineate the mark, another for the inscriptions, and the third for the cancellations. The registry of each mark shall be made by numerical and chronological order. An index-book, by alphabetical order, of surnames, shall also be kept, with the industry to which the mark corresponds, the book, page, and number of the item. A report shall be published every year of all the marks registered during it, with description of each mark.

ART. 22. For the registration and certificate of a mark, whatever be its origin, a fee of thirty pesos shall be paid.

For the registration and certificate of transfer the fee shall be fifteen pesos.

For each copy of the certificate five pesos shall be paid, in addition to the value of the stamped paper on which it is drawn up.

These fees shall be paid into the National Treasury.

ART. 23. The marks, as well as their descriptions, except the secret countersigns, shall be kept in the Office at the disposal of any one that shall desire to examine them.

ART. 24. Factories situated in countries with which the Republic has entered into treaties in regard to this subject, may have their marks registered, by applying for it directly or by means of an attorney, and giving proof of the registration of the mark in the original country; but all the papers must be translated into Spanish and authenticated.

ART. 25. He who has inscribed his mark shall retain the ownership thereof as long as the courts do not order the registration to be canceled. Accordingly, it may be assigned or allowed to be used by others; but the fact should be announced in the *Periódico Oficial,* and the deed of transfer or concession shall be recorded at the Trade Mark Office.

Those that hitherto have failed to comply with these requirements shall take care to fulfill them to legalize their rights.

ART. 26. The name of a merchant or firm, and the sign or designation of a house that deals in determined articles, shall constitute an industrial property for the purposes of this law.

ART. 27. If a merchant desires to carry on an industry in which another person is already engaged with the same name or with the same conventional designation, he must change his own so as to make it visibly distinct from that used by the pre-existing house.

ART. 28. Joint-stock companies shall have the right to use the name that they bear, the same as any private individuals, and are subject to the same regulations.

ART. 29. The right to the exclusive use of a name as industrial property shall terminate with the commercial house that bears it, or with the exploitation of the branch of industry.

ART. 30. The registration of a name is not necessary for securing the exercise of the rights granted by this law, except in case that it forms a part of the mark.

ART. 31. The registration of marks is granted without responsibility as to the Government. Those considering themselves injured by third parties shall have recourse to the courts and seek redress through such civil or criminal action as may be proper.

ART. 32. Third parties may apply for the nullification of a mark:

1) When the registered owner has not within the term fixed by Art. 11 continued to exploit the industry to which the mark belongs;

2) When there are circumstances that lead to the belief that the tenor of the mark does not correspond to its real products, the risk of misrepresentation being thus imminent. (Paragraph 3, Art. 34.);

3) The petition for the nullification of a mark shall be made on petition to the courts against the registered owner, or against his heirs, in case he shall have died.

ART. 33. If before or after the commencement of the suit, the mark is transferred to another person, the case shall continue to the end against those who have succeeded to the right.

ART. 34. The following shall be punished as provided in Paragraph II, Title III, Book II of the Penal Code:

1) Those who counterfeit or imitate in any way a mark of manufacture, of commerce, or of industry;

2) Those who place on their products or the articles belonging to their business a mark belonging to another person;

3) Those who knowingly sell, place on sale, offer for sale, or circulate, articles with counterfeit marks or with marks fraudulently applied;

4) Those who knowingly sell, place on sale, or offer for sale, counterfeit marks, and those who sell authentic marks without knowledge of their proprietor;

5) All those who with fraudulent intention place, or cause others to place, on an article of merchandise a false announcement or any other designation relating to the registration of the mark, or to the nature, quality, quantity, number, weight

or measure, or the place or country in which it has been made or distributed; and

6) Those who knowingly sell, place on sale, or offer for sale merchandise with any of the false announcements mentioned in the preceding item.

ART. 35. In order that there be criminality, it is not necessary that the falsification embrace all of the objects that were to be marked, there sufficing the affixing to a single article.

ART. 36. Those who sell or place on sale merchandise with usurped or counterfeited marks in ignorance of the circumstance, shall be bound to give to the merchant or manufacturer, owner thereof, when he may ask for it, a complete account in writing of the name and address of the party that shall have sold or obtained the merchandise, as well as the time when the sale began, and in case of resistance they may be compelled judicially under penalty of being considered accomplices of the offending party.

ART. 37. Articles of merchandise bearing counterfeit marks which may be found in the possession of the counterfeiter or his agents shall be confiscated and sold, and the proceeds thereof, after paying the costs and indemnities established by this law, shall be turned over to the Treasury of the Houses of Charity of the locality.

ART. 38. Counterfeit marks found in the possession of the counterfeiter, or his agents, shall be destroyed together with the instruments used to make them.

ART. 39. In order that the Trade Mark Office shall be duly organized, industrials, merchants or manufacturers who are now in possession of a mark registered in the Republic shall present themselves within three months at the said Office for the express purpose of securing anew the registration of their mark.

ART. 40. If before the promulgation of this law various industrials, merchants or manufacturers have been making use of the same mark, the right to the exclusive use of the same shall belong to the one who proves to have made legitimate use of it prior to all others.

If none of those interested can show priority in the use of the mark, priority thereof shall be granted to the one who has the greatest elements of production.

ART. 41. When the registration of the mark has not been made within the time fixed by Art. 39, no one shall be permitted to avail himself of the use thereof before the sanction of the present law as a ground for his claim to the right of priority.

ART. 42. In order that foreign marks may enjoy the guar-

anties established by this law, they must be registered in accordance with the treaties made for that purpose.

The proprietors of said marks, or their agents duly authorized, are the only persons who may request the registration of the same.

ART. 43. The Directorate-General of the Statistics shall be charged with the organization of the Trade Mark Bureau in accordance with the present law and the regulations that the Secretariat of the Bureau shall promulgate.

HAITI

LAW OF JUNE 13, 1919

ARTICLE 1. Any manufacturer, merchant or trader has the right of distinguishing his merchandise or products by means of special marks of manufacture.

ART. 2. Marks of manufacture and of commerce may be of any design not prohibited by the present law and serving to distinguish certain articles from other identical and similar articles, but of different origin. The following are considered as trade marks: names under a distinctive form, emblems, imprints, stamps, seals, reliefs, letters, figures, in general any mark serving to distinguish the products of manufacture, or the objects of commerce.

Trade marks may be employed on the articles themselves, or on their wrappings.

ART. 3. The following designs are prohibited: coats of arms, medals or official insignia, national or foreign, as well as all denominations or figures offensive to morals or to public decency.

ART. 4. In order to guarantee the exclusive right of possession and use of trade marks, it is indispensable that they be registered, deposited and published, in conformity with the prescriptions of the present law.

ART. 5. In order to obtain the registration of a trade mark, the person interested, or his representative, must address his application to the Chamber of Commerce of Port-au-Prince. This application should be made in duplicate originals upon stamped paper of the denomination of seventy centimes. It should contain the facsimile of the trade mark, a detailed description of that which constitutes the mark, a declaration of the kind of industry or of business to the use of which the mark is assigned, the calling of the petitioner and the location of his manufacturing establishment. Of these two originals, comprising the application for registration, one will be sent to the Department of Commerce, the other will remain in the Chamber of Commerce.

A *procès-verbal* of deposit will be drawn up by the Chamber of Commerce, which will enter it on a special Register, numbered and initialed by the Dean of the Tribunal of the First Instance. A copy of this will be delivered to the petitioner. An extract will be sent to the Department of Commerce in order

to be inserted in the *Moniteur Officiel.*

ART. 6. There will be payable a tax of registration of thirty gourdes for the marks of the country, and seventy-five gourdes for foreign marks. Half of this tax will accrue to the Public Treasury and the other half to the Chamber of Commerce.

ART. 7. The registration of marks will be valid for all the products and merchandise of the country during a period of 20 years, at the expiration of which it may be renewed for the same period, in accordance with the same formalities prescribed by the present law. For foreign marks the duration of the registration will be fixed in accordance with the laws of the countries where they are exploited, which cannot exceed that fixed by the present law.

ART. 8. Marks are assignable; their assignment will be mentioned on the margin of the *procès-verbal* of deposit provided in Art. 5.

ART. 9. The following will be condemned to a fine of 500 gourdes to the profit of the Public Treasury:

1) He who shall make use, without authorization, of a mark of which he is not the proprietor;

2) He who has reproduced in whole or in part, in any manner whatever in a fashion to deceive the consumer, a trade mark that has been registered and published;

3) He who has employed such an imitation or counterfeit mark.

ART. 10. The following will be condemned to a fine of 250 gourdes to the profit of the Public Treasury:

1) He who has employed on a trade mark the coat of arms, the insignia of a public or official character, national or foreign;

2) He who has employed trade marks offensive to morals or public decency.

ART. 11. The proprietor of the mark falsified or falsely reproduced has the right of depositing a complaint against those whom he finds in one of the cases foreseen in Arts. 9 and 10. The prosecution may be exercised officially by the Public Minister before the Tribunal of the First Instance in the jurisdiction of which the products have been found, without prejudice to damages that may be due to the proprietor of the mark.

ART. 12. The fraud once proven, the products that bear the false or counterfeit mark will be seized and sold at public auction, either pending decision, if they are susceptible of being damaged or deteriorated, or in execution of judgment. They constitute the guarantee of payment of the fine and the indemnity due to the party injured.

ART. 13. The seizure will be made on petition of the party

interested and in the case of Art. 10 on demand of the Commissioner of the Government of the Jurisdiction where the merchandise or products have been found. The competent Tribunal is that of the domicile of the complainant or of the place where the merchandise or products have been found.

HAWAII

REVISED STATUTES OF HAWAII, CHAPTER 191, 1915

Certificate May Be Obtained

Section 3428. Any person or firm, or any corporation, desiring to secure the exclusive use of any print, label or trade mark intended to be attached or applied to any goods or manufactured articles, or to bottles, boxes or packages containing such goods or manufactured articles, to indicate the name of the manufacturer, the contents of the packages, the quality of the goods, or directions for use, may obtain a certificate of registration of such print, label or trade mark in the manner hereinafter provided.

Application for Certificate

Sec. 3429. Before any one shall receive a certificate of registration of a print, label, or trade mark, he shall file in the office of the treasurer, an application for the registration of such print, label or trade mark, with a declaration verified by the oath of the applicant; or, if the application be made by a firm or corporation, by the oath of a member of such firm, or an officer of such corporation, that he is, or they are, the sole and original proprietor or proprietors, or the assign or assigns of such proprietor or proprietors of the goods or manufactured articles for which said print, label or trade mark is to be used, and describing such goods and manufactured articles, and the manner in which such print, label or trade mark is to be used. Said application shall be accompanied by two exact copies of such print, label or trade mark.

Fee

Sec. 3430. Upon filing such application, the applicant or applicants shall pay to the treasurer a fee of $5.00.

Record

Issuance and Effect of Certificate

Sec. 3431. Upon receiving such application so accompanied, and the payment of such fee, the treasurer shall cause the said print, label or trade mark to be recorded in a book to be kept for that purpose, and shall issue to the applicant or applicants a certificate of registration under the seal of the treasury; and such certificate of registration shall secure to the applicant or applicants the exclusive use of the said print, label or trade mark throughout the Territory of Hawaii for the term of twenty years from the date thereof.

HONDURAS

DECREE NO. 87 OF MARCH 22, 1919

ARTICLE 1. Any sign, emblem, or special name that merchants or manufacturers adopt on their articles or products for distinguishing them from those of other manufacturers or merchants that manufacture or trade in articles of the same species shall be considered a mark of commerce or of manufacture.

ART. 2. Marks may be placed upon the containers or wrappers or upon the objects themselves that it is desired to distinguish.

ART. 3. The color or form of articles shall not be considered as marks.

ART. 4. There shall not be registered as marks in Honduras:

a) Those identical or similar to others already registered in favor of others, or which have distinctive characters of such nature that they may cause confusion at first sight;

b) The escutcheons, emblems, or seals that are used by the Government, municipalities, or any public corporation, whether national or foreign;

c) Simple names, generic or geographic, or of persons or objects if not accompanied by designs or phrases that singularize them;

d) The names or portraits of living persons, without their consent;

e) Any sign or word that is contrary to morals or ridicules a corporation or person, in the opinion of the Commissioner of the Office of Patents and Marks, or of the Secretary of Fomento.

ART. 5. In order to obtain the exclusive right to the use of a mark of manufacture or of commerce, it is necessary to cause it to be registered in the Office of Patents and Marks under the conditions that this law establishes.

ART. 6. Any Honduran or foreigner who desires to register a mark of manufacture or of commerce in Honduras must present an application, on corresponding stamped paper, that expresses the name, domicile, and profession of the applicant, name and location of his factory and his place of business; complete and detailed description of the mark with the reservations that are made with respect to it; if it has been registered before in other countries, in what office, under what number and on

what date; the character of the mark and the name of the products to which it is applied and in what form.

With said application there shall be presented:

a) The authorization to apply if the interested party does not present it himself;

b) The contract of agency;

c) A block or electrotype that represents the mark;

d) Ten specimens of the mark.

ART. 7. When the applicant is a foreign person or corporation, the authorization to apply mentioned in section (a) of the foregoing article must be accompanied by a certificate of the mark, if it has been registered before in a foreign country. Both documents must be legalized in the country of origin and authenticated by the Consul of Honduras resident in the same.

ART. 8. Those only may exercise representation who are qualified in the judicial branch. Neither may the employees of the Executive Power exercise it.

ART. 9. The registration of the mark is made under the exclusive responsibility of the applicant and without prejudice to third parties.

ART. 10. If the Office of Patents and Marks, after examination, shall see that the application and the documents to which Art. 6 refers are found in conformity with the provisions of this law, it shall order the said application to be published in the official periodical, *La Gaceta,* with a reproduction of the *cliché* of the mark, during three consecutive months, with intervals of thirty days. In the contrary case, it shall make it known to the interested party within the second day following its presentation. If within thirty days after the last publication has been made no opposition has been presented, the Fiscal General of the Treasury shall be heard; and this requisite being accomplished, the deposit and registration of the mark shall be made by delivering certification to the party interested.

ART. 11. If opposition be presented, the documents shall be passed to the First Judge of Civil Law of the department of Tegucigalpa, in order that, in conformity with the procedure of ordinary law, the rights of the contending parties may be ventilated. The decision of the judge being given, the said documents will be returned to the Office of Patents and Marks in order that note may be taken in favor of whom the disputed mark ought to be registered.

ART. 12. The certification spoken of in Art. 10 shall consist of a copy of the grant of registration and deposit of the mark. The said certification shall be attested with the signatures of the Chief of the Office and of the Secretary, with the

Seal of the same, and shall constitute the title that accredits to the interested party the right to the exclusive use of the mark.

ART. 13. Questions that arise as regards priority of deposit or adoption of a mark of commerce or of manufacture shall be determined by taking into account the date of deposit in the country in which has been made the first application.

ART. 14. The registration of the mark shall occasion in favor of the Exchequer an impost of fifty pesos silver, for a single time, and shall be effected in the National Treasury before the issuance of the said certification.

ART. 15. The registration of a mark shall remain valid during ten years. At the end of this term registration may be renewed on application of the interested party, without which there can be no penal action against those who unduly use or falsify the mark; this renewal will occasion the same fees as the registration.

ART. 16. The registration of a mark shall commence to produce its effects from the date of the issuance of the corresponding grant.

ART. 17. Marks of manufacture and of commerce may be transferred or alienated the same as any other right. This transfer shall occasion the same impost as that of its registration; and, in the corresponding file, as an indispensable requisite, shall be noted the name of the acquirer, with the addition of all such documents as may be presented for the case.

The transfer must be registered in the Office of Patents and Marks, and, without this requisite, it shall produce no effect against a third party.

ART. 18. Marks may be transferred only with the establishment in which are produced or sold the articles protected by them.

The sale or transfer effected, the interested or his representative shall present a certified copy of the document of the transfer. If the sale has been effected abroad, said document must be authenticated by the Consul of Honduras resident in the country in which the sale or transfer was made. The Office of Patents and Marks shall include that document with the corresponding file and inscribe on the margin of the Book of Registration an extract from the deed of assignment. It shall give certification to the interested party for corresponding effects.

ART. 19. The registration of a mark will be null when it has been made in contravention of the provisions of this law, or when the mark has been earlier registered by another, if this registration has existed more than two years or if, having existed less than two years, it was effected with better right.

ART. 20. The right of ownership of a mark will be extinguished:

a) On application of the interested party;

b) When the term of ten years has run and renewal has not been effected;

c) When a question as to the validity of a mark having been raised, the decision shall declare that it cannot be conceded, whether because it belongs to another person or for any other circumstance of those enumerated in this law.

ART. 21. Whoever is occasioned prejudice by the registration of a mark may petition for its nullity. The Fiscal General of the Treasury may also do so in the cases in which a general interest exists.

ART. 22. The executory decision that declares the nullity of registration of the mark will be communicated to the Office of Patents by the Judge that has cognizance of the matter and will be published in the official periodical, *La Gaceta.*

ART. 23. Every registration will be effected under the exclusive responsibility of the applicant. The Government only undertakes to give protection to him who has registered a mark without obstacles, or to him who has given proofs of having the better right.

ART. 24. Marks deposited in conformity with this law shall be preserved in perpetuity in the Patent Office, and their registration may be examined by any person that so requests. Also, certified copies can be obtained on payment of twenty-five pesos into the National Treasury, duly presenting the receipt on applying for the certification.

ART. 25. A mark will be considered abandoned if more than one year elapses without the production of the article for which it is destined or if it is not used during this term in the Republic; but it may be rehabilitated upon payment of a new impost.

ART. 26. It will be considered falsification when marks are used that are imitations of others already registered in Honduras or when there have been suppressed, altered, or changed, letters, numbers, forms, colors, or signs in such a manner as may cause confusion at first sight, and which pertain to a mark already registered.

ART. 27. They shall be considered guilty of the crime of falsification in conformity with the provisions of the Penal Code, whatever may be the place in which this shall have been committed:

a) Who have falsified a mark;

b) Who make use of a mark belonging to another or imitated;

c) Who import, sell, aid or assist in circulating articles with marks falsified or fraudulently applied;

d) Those who refill with spurious products receptacles protected with imitation marks;

e) Those who place or cause to be placed on an article legends, or any other designations, false with respect to the nature, quality, quantity, proprietorship, number, weight, or measure of an industrial or mercantile product, or the place or country in which it was manufactured or distributed;

f) Those who sell articles with marks that bear the legend of being registered, without being so in Honduras.

ART. 28. The prosecution of falsifiers, importers or sellers of articles with marks falsified or imitated and other crimes that have been committed in contravention of this law shall be disposed of according to the Second Part, Sole Book, of the Code of Procedure in force.

ART. 29. When there are International Conventions or treaties, the registration of trade marks shall be verified in conformity with the stipulations therein.

ART. 30. The Government shall establish an Office of Patents and Marks, subordinate to the Secretariat of Fomento; in the meantime, the said Secretariat shall have the said Section in charge.

ART. 31. Decree No. 106 of March 7, 1902, stands abrogated. Marks that have been registered before the publication of this law shall enjoy the protection that the present decree grants, and those presented to be registered before it came into force will be subject to the decree in force at the time of their presentation.*

ART. 32. The present law will commence to be of effect the first of August next.

*Art. 31 is ambiguous. Our correspondent in Tegucigalpa interprets it to mean that marks registered prior to Aug. 1, 1919 [the date when the present law became effective], for an indefinite period, will continue for a term of ten years from that date, and applications pending on the same date will be registered without payment of additional fee and for a term of ten years.—*Ed.*

HONGKONG

ORDINANCE NO. 40 OF DECEMBER 10, 1909

Short Title

1. This Ordinance may be cited as the Trade Marks Ordinance, 1909.

Definitions

2. In and for the purposes of this Ordinance (unless the context otherwise requires):—

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

A "trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale:

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Ordinance:

"The Registrar" shall mean such officer as the Governor may, by order to be published in the Gazette, from time to time appoint to be Registrar of Trade Marks:

"The Seal of the Registrar" shall mean the Seal of the office in which the Register of Trade Marks is kept:

"The Register" shall mean the register of trade marks kept under the provisions of this Ordinance:

A "registered trade mark" shall mean a trade mark which is actually upon the register:

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of court, and, in other cases, prescribed by this Ordinance or the Rules thereunder:

"The Court" shall mean the Supreme Court and includes a Judge of the Supreme Court sitting separately in Court or in Chambers and in Original or Summary Jurisdiction:

"The Tribunal" shall mean the Governor, the Court or the Registrar.

Seal

3. The Registrar shall use a seal having a device and impression of the Royal Arms with a label surrounding the same and the inscription "The Seal of the Trade Marks Office Hongkong."

Register of Trade Marks

4. There shall be kept for the purposes of this Ordinance, at such office as the Governor shall by order to be published in the Gazette direct, a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the dates of their registration, the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Registrar.

Trust Not to be Entered on Register

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of Existing Register

6. The register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the register. Subject to the provisions of sections 36 and 41 of this Ordinance, the validity of the original entry of any trade mark upon the register so incorporated shall be determined in accordance with the Ordinance in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

Inspection of and Extract from Register

7. The register kept under this Ordinance shall during office hours be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Office of the Registrar, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Registrable Trade Marks

Trade Mark Must Be for Particular Goods

8. A trade mark must be registered in respect of particular goods or classes of goods.

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature (in other than Chinese characters) of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark; but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3) and (4), shall not, except by order of the Governor or the Court, be deemed a distinctive mark.

Provided always that any special or distinctive word or words, letter, numeral or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration, shall be registrable as a trade mark under this Ordinance, if it is already registered in the United Kingdom as an old mark used before the said date.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured Trade Marks

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any Tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on Registration

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

Registration of Trade Marks

Application for Registration

12. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) In the case of an application for registration of a trade mark under section 9 (5), which does not fall within the descriptions in section 9 (1), (2), (3) or (4), the Registrar shall refer the application to the Governor or to the Court, at the option of the applicant, for an order thereon.

(3) Subject to the provisions of this Ordinance, the Registrar may refuse an application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(4) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing and communicate to the applicant the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Governor or the Court at the option of the applicant. The Tribunal shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice.

(6) The Registrar or the Governor or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

ADVERTISEMENT OF REGISTRATION

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the applicant shall, as soon as may be after such acceptance, cause the application, as accepted, to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

OPPOSITION TO REGISTRATION

14. (1) Any person may, within the prescribed time from the date of the advertisement of an application for registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant and, within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(4) If the applicant send such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Governor.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Tribunal shall, if required, hear the parties and the Registrar, and shall make an order determining whether and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the Tribunal bring forward further material for the consideration of the Tribunal.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as herein-above provided, except by leave of the Tribunal hearing the appeal. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar or, in the case of an appeal to the Governor, the Governor shall have power in proceedings under this section to award to any party costs of such proceedings or any part thereof and to direct how and by what parties and on what scale they are to be paid. Such costs shall be taxed before the

Registrar of the Supreme Court and shall be recoverable in the same manner as costs in an action.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the Registrar or the Tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal and, in default of such security being duly given, may treat the opposition or appeal as abandoned.

DISCLAIMERS

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Governor or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which the Tribunal holds him not to be entitled, or that he shall make such other disclaimer as the Tribunal may consider needful for the purpose of defining his rights under such registration; provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

DATE OF REGISTRATION

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be the date of registration.

CERTIFICATE OF REGISTRATION

17. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

NON-COMPLETION OF REGISTRATION

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing

in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Identical Trade Marks

19. Except in the case of trade marks in use before the thirteenth day of August one thousand eight hundred and seventy-five which are registered in the United Kingdom as old marks used before the said date, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival Claims to Identical Marks

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or an appeal by the Court.

Protection of Marks Registered in Country of Origin

21. The Registrar may refuse to register any trade mark if it is proved to his satisfaction by the person opposing the application for registration that such mark is identical with, or so nearly resembles as to be calculated to deceive, any trade mark which is already registered (in respect of goods of the same description as those in respect of which registration in Hongkong is applied for) in a country or place from which goods of that description originate.

Provided always that no application to register shall be refused under this section in the following cases:

(*a*) if the applicant proves that he or his predecessors in business have in Hongkong in connection with such goods as aforesaid continuously used the trade mark, the registration of which is applied for, from a date anterior to the date of the registration of the other trade mark in such country or place of origin; or

(*b*) unless the opponent gives an undertaking to the satisfaction of the Registrar that he will, within three months from the giving of the notice of opposition, apply for registration in Hongkong of the trade mark so registered in the country or place of origin, and will take all necessary steps to complete such registration.

ASSIGNMENT

Assignment and Transmission of Trade Marks

22. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

APPORTIONMENT OF MARKS ON DISSOLUTION OF PARTNERSHIP

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provision of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

24. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as in the opinion of the Registrar to be calculated to deceive or cause confusion if used by a person other than the applicant, the Tribunal hearing the applicant may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

COMBINED TRADE MARKS

25. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

SERIES OF TRADE MARKS

26. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of:

(*a*) statements of the goods for which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality, or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

ASSIGNMENT AND USER OF ASSOCIATED TRADE MARKS

27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that, where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the Tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

DURATION OF REGISTRATION

28. The Registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

RENEWAL OF REGISTRATION

29. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

PROCEDURE ON EXPIRY OF PERIOD OF REGISTRATION

30. At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration

will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if, at the expiration of the time prescribed in that behalf, such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

STATUS OF UNRENEWED TRADE MARKS

31. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTIONS AND RECTIFICATIONS OF THE REGISTER

Correction of Register

32. The Registrar may, on request made in writing by the registered proprietor or by some person entitled by law to act in his name:

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

REGISTRATION OF ASSIGNMENTS

33. Subject to the provisions of this Ordinance, where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

ALTERATION OF REGISTERED TRADE MARK

34. The registered proprietor of any trade mark may apply in writing to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

RECTIFICATION OF REGISTER

35. Subject to the provisions of this Ordinance:

(1) The Court may, on the application in writing of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(3) In case of fraud in the registration or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section.

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the register accordingly.

TRADE MARKS REGISTERED UNDER PREVIOUS ACTS

36. No trade mark which is upon the register at the commencement of this Ordinance and which under this Ordinance is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Ordinance in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the Ordinance then in force.

NON-USER OF TRADE MARK

37. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in

connection with such goods, and that there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect to such goods.

EFFECT OF REGISTRATION

Power of Registered Proprietor

38. Subject to the provisions of this Ordinance:

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other property.

RIGHTS OF PROPRIETOR OF TRADE MARK

39. Subject to the provisions of section 41 of this Ordinance and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered; provided always, that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall, except so far as their respective rights shall have been defined by the Court, be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

REGISTRATION TO BE PRIMA FACIE EVIDENCE OF VALIDITY

40. In all legal proceedings relating to a registered trade mark (including applications under section 35 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

REGISTRATION TO BE CONCLUSIVE AFTER SEVEN YEARS

41. In all legal proceedings relating to a registered trade mark (including applications under section 35 of this Ordinance) the original registration of such trade mark shall after the ex-

piration of seven years from the date of such original registration (or seven years from the passing of this Ordinance, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud or unless the trade mark offends against the provisions of section 11 of this Ordinance.

Provided that nothing in this Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first mentioned trade mark by the proprietor thereof or his predecessors in business.

REMOVAL OF MARK ON PROOF OF PRIOR REGISTRATION IN COUNTRY OF ORIGIN

42. (1) The Court may, on the application in writing made within seven years from the registration of a trade mark in Hongkong by any person aggrieved by such registration, remove such trade mark from the Register, if it is proved to the satisfaction of the Court that such trade mark is identical with, or so nearly resembles as to be calculated to deceive, any trade mark which was, prior to the registration in Hongkong of the first mentioned trade mark, registered (in respect of goods of the same description as those in respect of which the first mentioned trade mark is registered in Hongkong) in a country or place from which goods of that description originate.

Provided always that no trade mark shall be removed from the register under this section in the following cases:

(*a*) if the proprietor of the other trade mark consented to the registration in Hongkong of the first mentioned trade mark; or

(*b*) if the proprietor of the trade mark registered in Hongkong proves that he or his predecessors in business have continuously used such trade marks in Hongkong in connection with such goods as aforesaid from a date anterior to the date of the registration of the other trade mark in the country or place of origin; or

(*c*) unless the applicant proves either that within the five years immediately preceding the making of the application under this section there has been *bonâ fide* user in connection with such goods as aforesaid in Hongkong of the trade mark registered in the country or place of origin or that the special circumstances of the trade account for the non-user of such trade mark in Hongkong within the same period or that the

trade mark so registered in the country or place of origin was first registered there within the like period of five years, and in either event gives an undertaking to the satisfaction of the Register that he will within three months from the making of the application under this section apply for registration in Hongkong of the trade mark so registered in the country or place of origin, and will take all necessary steps to complete such registration.

(2) All applications under this section shall be heard in open court in Original Jurisdiction.

UNREGISTERED TRADE MARK

43. No person shall be entitled to institute any proceedings to recover damages for the infringement of a trade mark not registered in this Colony.

INFRINGEMENT

44. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

USER OF NAME, ADDRESS, OR DESCRIPTION OF GOODS

45. No registration under this Ordinance shall interfere with any *bonâ fide* use by a person of his own name or place of business, or that of any of his predecessors in business or the use by any person of any *bonâ fide* description of the character or quality of his goods.

"PASSING OFF" ACTION

46. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of Validity

47. In any legal proceedings in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client unless in such subsequent proceeding the Court certifies that he ought not to have the same.

REGISTRAR TO HAVE NOTICE OF PROCEEDING FOR RECTIFICATION

48. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceedings.

COSTS

Costs of Proceedings Before Court

49. In all proceedings before the Court under this Ordinance the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Mode of Giving Evidence

50. In any proceeding under this Ordinance before the Registrar or the Governor, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right so to do, the Registrar or the Governor may (with the consent of the parties) take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *vivâ voce* the Registrar or the Governor shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as a Special Referee of the Supreme Court.

SEALED COPIES TO BE EVIDENCE

51. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar under his seal, shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the originals.

CERTIFICATE OF REGISTRAR TO BE EVIDENCE

52. A certificate purporting to be under the hand of the

Registrar as to any entry, matter, or thing which he is authorized by this Ordinance, or rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of Discretionary Power by Registrar

53. Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

APPEAL FROM REGISTRAR

54. Except where expressly given by the provisions of this Ordinance or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Governor, but the Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section 35 of this Ordinance), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

RECOGNITION OF AGENTS

55. Where by this Ordinance any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Ordinance be done by or to an agent of such party duly authorized in the prescribed manner.

RULES

Power of Governor-in-Council to Make Rules

56. (1) Subject to the provisions of this Ordinance the Governor-in-Council may from time to time make such rules, prescribe such forms and generally do such things as he thinks expedient:

(*a*) For regulating the practice under this Ordinance;

(*b*) For classifying goods for the purposes of registration of trade marks;

(*c*) For making or requiring duplicates of trade marks and other documents;

(*d*) For securing and regulating the publishing and selling or distributing, in such manner as the Governor-in-Council thinks fit, of copies of trade marks and other documents;

(*e*) Generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the Registrar.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Ordinance.

(3) Any rules made in pursuance of this section shall be forthwith published in the *Gazette*.

FEES

57. There shall be paid in respect of applications and registration and other matters under this Ordinance such fees as may be prescribed by the Governor-in-Council and a list of such fees shall forthwith be published in the *Gazette*.

SPECIAL TRADE MARKS

Standardization of Trade Marks

58. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Governor-in-Council may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor-in-Council.

OFFENCES

Falsification of Entries in Register

59. If any person makes or causes to be made a false entry in the register kept under this Ordinance or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

PENALTY ON FALSELY REPRESENTING A TRADE MARK AS REGISTERED

60. (1) Any person who represents a trade mark as registered in Hongkong which is not so shall be liable for every offence on summary conviction to a fine not exceeding fifty dollars.

(2) A person shall be deemed, for the purposes of this Ordinance, to represent that a trade mark is registered in Hong-

kong, if he uses in connection with the trade mark the words "registered in Hongkong," or any words expressing or implying that registration has been obtained in Hongkong for the trade mark.

ROYAL ARMS

Unauthorized Assumption of Royal Arms

61. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorized to use such arms or such device, emblem, or title, or is authorized by the Governor to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

REPEAL OF PREVIOUS ENACTMENT

Repeal of Previous Ordinance and Saving

62. The Trade Marks Ordinance, 1898, is hereby repealed and all rules made thereunder are hereby revoked as and from the first day of April, 1910: Provided always that the provisions of that Ordinance shall apply to all such applications as may be pending at the date of the commencement of this Ordinance.

COMMENCEMENT OF ORDINANCE

63. The Governor may appoint the Registrar under this Ordinance immediately after the passing hereof, and thereafter all matters and things hitherto transacted and done by the Colonial Secretary under the Trade Marks Ordinance, 1898, and all rules made thereunder may be transacted and done by the Registrar, but in all other respects this Ordinance shall come into operation on the first day of April, 1910, which shall be deemed to be the date of the commencement of this Ordinance.

HUNGARY

LAW OF JANUARY 6, 1890,* AS AMENDED APRIL 13, 1913, AND BY LEGISLATIVE ARTICLE XXII OF 1921

SECTION I

General Provisions

Article 1. In this law, under the term "Marks" are understood the special marks (such as devices, numbers, vignettes and the like) that serve to distinguish in commerce certain products and goods from other similar products and goods.

In the decision as to whether a mark is adapted therefor, there shall be taken into consideration all facts, in particular the duration of the use of the mark, in accordance with the conception of the line of business concerned.

Art. 2. Any person wishing to secure the exclusive right to use a mark must obtain the registration of the same conformably with the provisions of the following sections.

Art. 3. Excluded from being registered, and, accordingly, no exclusive right to them can be obtained, are such marks:

1) As are exclusively composed of portraits of the Emperor or of members of the Imperial House;

2) As merely consist of the national or other public arms, or words;

3) As are in general commercial use for certain kinds of goods;

4) As contain improper representations causing scandal or otherwise contrary to public morality, or such inscriptions or statements as do not correspond to the actual commercial state of affairs or the truth, and are liable to deceive the consuming public.

Art. 4. Such marks in which portraits of the Emperor or of members of the Imperial House, a distinction of honor, the Imperial Eagle or public arms, form a constituent part, shall only be registered if the right to use these special marks within the meaning of the existing provisions shall have been previously evidenced.

Art. 5. No person shall be prevented, through the registration of any mark which also contains letters or words, from using his name or that of his firm, even if it be in an abbreviated form, for distinguishing his goods.

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*Official title is "Legislative Article II of 1890."

ART. 6. The use of registered marks is in general optional, but the Minister of Commerce may decree, as regards certain kinds of goods, that goods of that class shall not be put into circulation unless they are provided with marks registered in the sense of this law, according to the procedure to be stipulated.

ART. 7. The sole right to a mark shall not exclude the use of the same mark by another applicant for other classes of goods.

In case of any doubt relative to the similarity of these classes of goods, the Minister of Commerce shall decide after consultation with the Chamber of Commerce and Industry (See Art. 13).

ART. 8. The application for several marks in the name of one applicant, even if they are for the same class of goods, is permitted conformably with the provisions of this law.

ART. 9. The right to a mark shall go with the business for which the mark is intended, shall expire with the same, and shall be transferred to the new proprietor in case of transfer of ownership.

The new owner, however, if he does not continue to conduct his business under an unchanged name, shall effect the assignment of the mark. Until this assignment has been executed in the Register of the Chamber of Commerce and Industry, he cannot make valid the right to the mark, and all official communications relating to the mark may be forwarded, to his disadvantage, to the registered owner of the mark or to his representative of record.

ART. 10. No person shall make use of the name, firm, insignia, or trade name of the establishment of another manufacturer or merchant for distinguishing goods or products without the consent of the party in question.

ART. 11. Everything that is stated in this law regarding the marking of goods applies also to the marks affixed to the cases, barrels, wrappers and the like.

ART. 12. Nothing is altered by the present law in the existing provisions relating to special marks for certain goods, especially the provisions as to punched marks.

SECTION II

REGISTRATION, TRANSFER, AND EXTINCTION OF MARKS

1. Registration

ART. 13. Four copies of the mark for which any person shall desire to obtain the exclusive right must be filed in the Chamber of Commerce and Industry in whose district the business in question is situated.

One copy shall be attached to the Register of Marks which is to be kept by the Chamber of Commerce and Industry; one copy shall be returned to the applicant, inscribed with the acknowledgment prescribed in the succeeding paragraph.

Two copies shall be laid before the Minister of Commerce.

The applicant must, at the same time, state for what classes of goods his mark is intended.

Further, a *cliché* (electrotype) of each mark must be filed with the Chamber of Commerce and Industry, which will be returned to the applicant after having been used.

In the case of marks for materials such as metal, earthenware, glass and the like, at least three samples of the materials with the marks impressed therein shall be filed.

ART. 14. Upon each specimen of the marks filed, the Bureau designated by the Chamber of Commerce and Industry shall note:

a) The serial number of the Register;

b) The day and hour of the filing;

c) The name or the firm for which the mark is to be registered;

d) The indication of the business and goods for which it is intended.

This notation must be signed and the official seal affixed.

The Registers of Marks shall contain the details cited in paragraphs (a) to (d) and shall be open to inspection at the Chambers of Commerce and Industry.

ART. 15. The registration of each mark is subject to a fee of 200 kroner, of which 75 per cent shall belong to the funds of the Chamber of Commerce and Industry at which the registration has been effected, and 25 per cent to those of the Ministry of Commerce (Patent Office) charged with keeping the Central Register of Marks.

ART. 16. The registration of marks shall be renewed every ten years, reckoning from the date of registration, by a fresh payment of the fee; otherwise the right to the mark will be considered as expired.

ART. 17. A Central Register of Marks shall be kept at the Ministry of Commerce, in which the marks registered in the Chambers of Commerce and Industry shall be entered in rotation as they arrive.

The same details shall be given in the general Register of Marks as are contained in the Registers to be kept by the Chambers of Commerce and Industry (See Art. 14).

The Central Register of Marks, as well as the catalogues of its contents, which are to be alphabetically arranged and

always kept up to date, shall be kept open for inspection in the offices of the Ministry in question.

The same applies to the samples (Art. 13).

Prints of the marks, after the latter have been entered in the Central Register, shall be published, using the blocks furnished (as per Art. 13).

ART. 18. The Minister of Commerce, if necessary, after consultation with experts, shall notify the applicant for protection if a mark identical or similar to the one just applied for exists already for the same class of goods, in order that the applicant, according to his judgment, may sustain, modify or withdraw the application.

The proprietor of the previously registered mark shall be, at the same time, informed that notice has been given to the applicant for protection of the mark.

ART. 19. The exclusive right to use a mark by an applicant shall commence from the day and hour of filing the same at the Chamber of Commerce and Industry, and the priority shall be decided therefrom, should similar marks have been filed by several applicants for protection at the same or different Chambers of Commerce and Industry.

2. Transfers

ART. 20. In order to transfer the right to a mark, within the meaning of Art. 9, the assignee must produce proof of his having acquired the business to which it relates.

The transfer shall be subject to the same tax as the first registration (Art. 15), and shall be entered on the certificate granted to the applicant (Art. 13, paragraph 2), as well as in the Register of the Chamber of Commerce and Industry (Art. 14), and in the Central Register of Marks (Art. 17), and published (Art. 17, last paragraph).

3. Extinction

ART. 21. Marks shall become extinct:

a) On application of the proprietor of the mark;

b) If the registration shall not have been renewed when due under the provisions of Art. 16;

c) . . . (repealed by law of March 17, 1913.)

d) If the Minister of Commerce shall decide that the mark should not have been registered;

e) In consequence of the decision of the Minister of Commerce pronounced in any action as to the existence of a right to a mark (Art. 30).

ART. 22. The extinction of a mark shall be entered on the certificate (Art. 14), as well as in the Register of the Chamber

of Commerce and Industry (Art. 14), and on the Central Trade Mark Register, and shall be published (Art. 17).

SECTION III

Infringement of the Rights to a Mark

Art. 23. Any person who shall knowingly put in circulation or keep for sale goods that are unauthorizedly marked with a mark the exclusive right of user of which belongs to another, and further, any person who for this purpose knowingly counterfeits a mark commits an offence and shall be liable to be punished by a fine of from 500 to 2,000 gulden.

In case of repetition, unless ten years have expired since the last conviction, the penalty may be imprisonment for not more than three months, with a fine of from 500 to 3,000 gulden.

If a greater penalty can be applied through application of the Penal Code, and, particularly if there be fraud or crime, there may be applied the provisions of this Code.

Art. 24. The stipulation of Art. 23 applies also to those who knowingly put in circulation, or keep for sale, goods that are unauthorizedly marked with the name, firm, insignia, or trade name of the establishment of a producer or merchant, or a domestic manufacturer; further, to those who knowingly fabricate such marks.

Art. 25. The liability to punishment for the acts enumerated in Arts. 23 and 24 is not avoided if the mark, name, firm, insignia, business style of the establishment, be reproduced with so slight an alteration or in such an indistinct manner that the difference might be detected by the ordinary purchaser of the goods in question only through special watchfulness.

Art. 26. The Royal Tribunals shall be charged with the repression of the crimes foreseen by Arts. 23 and 24, also in the Croat and Slav Provinces.

Art. 27. Prosecution shall be initiated only on petition of the injured party. On petition of the injured party an order shall be made that the tools and appliances exclusively or specially used for the counterfeiting or unauthorized reproduction shall be rendered unserviceable for this purpose, that the stocks of counterfeit marks and unauthorizedly manufactured labels shall be destroyed, and the unauthorized marks and labels removed from goods found in the possession of the guilty persons, or, in this respect, from the packages of the same, even if that should involve the destruction of the goods.

The injured party shall be further authorized to publicly make known the judgment against the infringer at the expense of the latter. The mode of publication, as well as the duration

of the same, shall be fixed in the decision after consideration of the petition of the injured party.

On application of the injured party, instead of the compensation due to him on his private rights, in addition to the penalty, a monetary fine to the amount of 5,000 gulden, to be handed to the injured party, may be decreed by the Court of Justice, the amount to be fixed after free and careful consideration of all the circumstances. Persons sentenced to pay a monetary fine shall be considered as joint debtors. The provisions of this paragraph shall apply, even if the punishment take place under the stricter stipulation of the general Penal Code.

ART. 28. The injured party shall be entitled, even before the punitive judgment is decreed, to demand the confiscation or seizure of the articles enumerated in Art. 27, paragraph 1, so that a repetition of the punishable act may be prevented.

The Criminal Court shall adjudicate immediately on this application, and it shall also be optional for it to authorize the desired confiscation and corresponding custody, as well as the other measures desired, only against security to be given by the injured party.

ART. 29. Should the injured party demand, for any of the offences described in Arts. 23 and 24, the grant of compensation through a Civil Court, the latter shall decide as to the right to compensation, as well as the amount of the same, after due consideration of all the circumstances.

The Minister of Commerce shall decide the point whether the exclusive right of user of a mark pertains to any person, also as to the priority and transfer of this right, and also whether a registered mark may be used by another party for a different class of goods. (Art. 7.)

Should it appear, in the court of criminal proceedings in any of the cases enumerated in Art. 23, that a decision of a question is dependent upon a prior question, regarding which, under the first paragraph, the Minister of Commerce has to adjudicate, the Criminal Court shall, after submitting the necessary documents to the Minister in question, request him to decide this question first and shall await the notice of same.

ART. 30. Section 413 of Law No. 5 of 1878 shall be abrogated following the coming into effect of the present law.

ART. 31. If the Minister of Commerce shall order, with regard to certain kinds of goods, that, before being placed in commerce, they shall be provided with registered marks, in the manner that shall be prescribed, any person that shall not comply with this order shall render himself guilty of a crime and shall be amenable to a fine of from 20 to 200 gulden in con-

formity with Sec. 157, paragraph (d), of Law No. 17 of 1884; in addition, his goods shall be seized.

These crimes shall be of cognizance of the jurisdiction of the industrial authorities mentioned in Sec. 166 of Law No. 17 of 1884, who shall comply with the procedure prescribed for the industrial crimes submitted to their decision.

SECTION IV

Marks Relating to Enterprises Outside Hungary

Art. 32. As regards the protection of marks, as well as of names, firms, insignia, or trade names of establishments of foreign enterprises, this shall take place in accordance with treaties or conventions concluded with the States in question.

The owners of foreign establishments shall be entitled to the protection of this law as respects the classes of trade marks of non-Hungarian enterprises specified in the first paragraph, in respect of which reciprocity exists, in so far as no agreements or conventions exist.

The existence of reciprocity shall be made known through a decree to be published in the *Reichsgesetzblatt.*

The regulations of the Customs and Commercial Union shall decide under what conditions marks registered in the territory of the Royal Austrian Crown, and also names, firms, insignia, or trade designations of establishments of manufacturers or merchants of that country, shall share in the protection secured by this law.

SECTION V

Concluding Regulations

Art. 33. Marks that shall have been registered under former provisions and with reference to which, under Art. 16, the stipulated period of ten years for new registration from the time of registration to the coming into effect of this law has not yet elapsed, shall enjoy, until the lapse of the ten years, the protection accorded under the provisions of this law without re-registration.

On the other hand, any mark that, on the coming into force of this law, shall have been registered more than ten years, shall, after the lapse of three months, reckoned from the time of coming into force of this law, be stricken from the Register if the proprietor of the mark in question shall not have registered it anew during this interval.

Such applications as shall be pending at the time of the coming into force of this law shall be completed before those

authorities that have previously been competent, and on the ground of former provisions.

ART. 34. Whenever mention is made in the present law of civil law or the Penal Code, there must be understood, in whatever concerns the Croat and Slav Provinces, the law in force in these countries.

ART. 35. This law shall become of effect three months after its promulgation. The Ministers of Commerce and of Justice are charged with its execution; however, in whatever concerns the Croat and Slav Provinces, the execution thereof shall be confided to the Minister of Commerce, who shall confer on this subject with the Ban of Croatia, Slavonia and Dalmatia.

LAW AMENDING AND COMPLEMENTING THOSE REGARDING THE PROTECTION OF MARKS

(LEGISLATIVE ARTICLE XXII OF 1921)

ARTICLE 1. Sec. 15 of Legislative Article II of 1890 is amended in the following manner:

. . . For amended Art. 15, see corresponding Art. 15 in Law of 1890. . . .

ART. 2. Industrial associations possessing civil capacity (therein comprised the Public Treasury in the manifestations of its industrial activity and other legal persons in accordance with public law) may, even if they are not proprietors of an establishment in which they fabricate or place on sale merchandise, deposit for registration marks of which their members may make use for the designation of their own products (collective marks).

The collective mark is governed, under reservations of the modifications below indicated, by the legal dispositions applicable to ordinary marks.

ART. 3. The by-laws (or the deed of association) of the association that deposits the collective mark shall be presented at the Patent Office and to the Chamber of Commerce and Industry having jurisdiction. The by-laws shall indicate: the name, the seat, and the purpose of the association, the organs that represent it; and they shall designate those that may make use of the mark, as well as the conditions of this usage. They shall enumerate the motives for which the use of the mark may be prohibited to a member of the association, as well as the rights and duties of those interested in case of violation of the mark. Subsequent modifications of the by-laws shall likewise be brought to the attention of the Patent Office and to the Chamber of Commerce and Industry. These by-laws shall be com-

municated to any person that shall demand such.

If the collective mark is generally known as the designation of merchandise in the trade circles that form part of the association, it may not be refused under the pretext that it constitutes a free mark (Sec. 3, paragraph 3, of Legislative Article II of 1890).

The fee for the deposit and registration of the collective mark is raised five-fold as respects that fixed in the first section.

In the Register the collective mark shall be particularly designated as such.

ART. 4. The right of depositing a collective mark and of obtaining registration therefor is not assignable.

ART. 5. The collective mark shall be cancelled, on petition of any person, not only in the case foreseen in Secs. 21 of Legislative Article II of 1890, and 3 and 4 of Legislative Article XLI of 1895, but also when the association shall cease to exist or when it shall have tolerated the unauthorized use of the collective mark.

The collective mark may not be cancelled for the simple reason that the enterprise has ceased to be exploited.

ART. 6. Rights determined during the course of procedure brought for illicit use of the collective mark shall also embrace reparation for damages caused to the different members of the association.

ART. 7. Secs. 8 and 9 of Legislative Article XLI of 1895 are abrogated and replaced by the following provisions:

Whoever, knowingly, introduces into commerce or offers for sale products improperly provided with a mark to the use of which a third party has the exclusive right, and whoever, knowingly, counterfeits a mark to this effect, renders himself culpable—provided that his act does not fall under a more severe penal provision—of an offence and shall be amenable to imprisonment for as much as six months and a fine of from five hundred to twenty thousand kroner.

If the fine inflicted by way of accessory punishment is not recoverable, the physical restraint that shall be substituted therefor may not exceed the term of one year.

The dispositions of the paragraphs that precede are likewise applicable to those that knowingly introduce in commerce or place on sale products improperly provided with the name, the commercial firm, arms, or the commercial denomination of the establishment of a producer, of an industrial, or of a merchant of the country; they shall apply also to him that knowingly shall prepare for such purpose the denominations abovementioned.

ART. 8. The crimes defined in Sec. 7 of the present law are within the jurisdiction of the Tribunals of the Arrondissement.

ART. 9. The Minister of Commerce and the Minister of Justice are charged with the execution of the present law after order rendered by the Minister of Commerce.

ICELAND

LAW OF NOVEMBER 13, 1903

SECTION 1. Every person who in this country carries on manufacturing or handcraft, agriculture, mining, commerce or other business may, besides his right to use as trade mark his name or firm or the name of real estate belonging to him, by registration in conformity with the rules contained in the present Statute, acquire exclusive right to use special trade marks in order to distinguish his goods from those of other parties in the open market. This right will comprise all kinds of goods, unless it has been restricted, at the registration, to certain kinds of goods.

The trade mark is to be placed on the article itself or its wrapping.

SEC. 2. The Register of Trade Marks shall be kept for the entire country at Reykjavik by a Registrar appointed for this purpose by the Governor, the salary and office expenses of the said Registrar being fixed for the period from the date when this Statute shall enter into force until December 31, 1905, by the Minister for Iceland, and shall be voted for the following period on the budget.

SEC. 3. Any person desiring to have a trade mark registered shall hand to the Registrar or send by mail, postage paid, an application containing a clear description of the mark and full information about the applicant's name or firm, trade and postal address, and, in case the right to the trade mark is to comprise only certain kinds of goods, an indication of these kinds of goods.

The application should be accompanied by:

1) A facsimile of the mark on durable paper in triplicate not more than 10 centimeters (3.937 in.) high and 15 centimeters (5.906 in.) wide;

2) Two printing blocks (*clichés*) of the same size and adapted to print the mark;

3) Forty Kroner as fee for the registration and the publication of the same.

As soon as possible, the Registrar should deliver or send to the applicant a written acknowledgment of the application having been received, and the date and hour of the same. A copy of the trade mark is to be attached to the acknowledgment.

SEC. 4. If any person, at the time when the present Statute

is promulgated, already uses certain marks to be affixed to his goods or the wrapping of the same, no other person may acquire, by making an application, the right to use those marks, provided that the first mentioned person, within fourteen days after the Statute has entered into force, applies for the marks used by him, in the manner prescribed in Sec. 3.

Sec. 5. The trade mark must not be registered:

1) When it consists solely in numerals, letters or words that are not of such prominent distinguishing form that the mark may be considered to be a figure-mark. Registration must not be refused, however, when the mark consists of words that are a specially invented denomination for certain kinds of goods, specified in the application in conformity with Sec. 3, and whereby it is not the object to indicate the origin, quality, purpose, quantity or price of the article;

2) When it contains, without authorization, another name or another firm than that of the applicant, or the name of the real estate of some other party;

3) When it contains public marks, such as coats-of-arms;

4) When it contains representations likely to give offence;

5) When it is perfectly similar to a trade mark that has already been registered for some other person or whose registration has been duly applied for, or which offers such similarity to the same that the marks in their entirety, notwithstanding the difference in details, may easily be mistaken for one another. Registration must not be refused, however, when the similarity consists in such denominations as are referred to in Sec. 8, or when the marks relate to different kinds of goods.

Sec. 6. If the registration is refused, a notification thereof and the reason for the refusal are to be communicated to the applicant in writing, in conformity with Sec. 3.

If the applicant considers the decision to be unfounded, he may, within three months thereafter, appeal the decision of the Registrar to the Governor, his privilege to have the question settled by the Courts, however, being not thereby restricted.

Sec. 7. When the registration has taken place, publication thereof must be effected as soon as possible in the newspaper authorized in Iceland to print official publications, there being besides, at the end of each year, published in the *Government Gazette,* Part B, a notification concerning the registrations effected during the course of the year.

Sec. 8. If a registered trade mark contains numerals, letters or words that cannot, in consequence of Sec. 5, be registered separately, or if it consists wholly or in part of such signs or marks as are commonly used in certain classes of trades,

other parties will not thereby be prevented from using the same signs as a trade mark or part of the same.

SEC. 9. The right to a registered trade mark may only be assigned in connection with the business for which it is used.

If any person assigns his business, his right to the registered trade mark used in the business is transferred to the buyer, unless agreement has been made to the effect that the assignor is to retain the trade mark right, or that both parties may use the mark for different kinds of goods.

SEC. 10. Protection of a registered trade mark shall cease when application for renewal has not been filed, the first time within ten years after the day of registration, and thereafter within ten years from the last renewal. Not less than four months before the expiration of the said time limits, the Registrar should notify the person for whom the mark is registered, or his attorney (Sec. 15), by registered letter mailed to the address in this country given by the person concerned, that the protection of the trade mark will cease, owing to lack of timely renewed application.

If any person shall desire to renew the registration, he must file or submit a written application worded in conformity with Sec. 3, accompanied by such facsimile as is prescribed, and 10 Kroner, as registration fee for the Exchequer. If the mark has been registered for some person other than the one applying for the renewal, the applicant's right to the mark is also to be proven. The renewal is to be entered, as soon as possible, in the Register, and a similar acknowledgment, as prescribed in Sec. 3, concerning application for a new mark, is to be given to the applicant.

If the Registrar deems the application to be defective in some respect, he must refuse the renewal. In respect to the refusal made and complaint regarding the same, the stipulations in Sec. 6 shall apply.

SEC. 11. If the Governor finds that according to the rules in Sec. 5, Nos. 3 or 4, a trade mark ought not to have been registered, he shall order the registration to be cancelled, but the justification for such order may be brought before the courts for adjudication.

If registration has been made of a trade mark consisting solely of signs or marks commonly used in certain classes of trade, cancellation thereof may be demanded by any person carrying on such business. Both in this case and otherwise, if any person considers the registration of a trade mark to be detrimental to him, the question relative to the cancellation of the registration shall be subject to decision by the courts.

If registration has been refused according to Sec. 5, No. 5, and the applicant shall prove, during a lawsuit against the possessor of the trade mark previously applied for or previously registered, that this is a mark originally used by him which the other party has appropriated, he may be found entitled by judgment to have the trade mark registered with the exclusive right to use the same which he might have claimed, when it was applied for by the other party, in case he brings suit concerning the same within a year after publication of the registration of the mark has been effected in the newspaper authorized in Iceland to print official publications.

Sec. 12. When registration of a trade mark has been declared to be cancelled, or the protection of a registered trade mark has ceased, or when the person entitled to the mark so petitions, the mark shall be cancelled from the Register, and publication thereof is to be effected both in the newspaper authorized in Iceland to print official publications and, at the end of the year, in the *Government Gazette*, Part B, in connection with the publication concerning the registrations effected during the course of the year, as mentioned in Sec. 7.

Sec. 13. Any person placing upon goods for sale or on the wrapping thereof, without authorization, some other person's name or firm or the name of another person's real estate or another person's registered trade mark, as well as any person offering for sale the goods marked in such manner, may, after lawsuit has been instituted on the part of the injured party, be sentenced to be without title to use the mark or to offer for sale the goods marked with the same. If he has had knowledge regarding the other person's better title, he shall be punished by fines of from 100 to 2000 Kroner, but in case of repetition the penalty may be increased to imprisonment and, in addition, he may be bound to make good the damage done and to remove the unlawfully applied marks, or, if necessary, to destroy the goods or their wrappings, provided that they are still in his possession or otherwise are at his disposal.

Sec. 14. The stipulations in Sec. 13 shall also apply when some other person's name or firm or the name of some other person's real estate or the registered trade mark of some other person are reproduced with such slight modifications that the names or the marks in their entirety, notwithstanding the difference in details, may easily be mistaken for one another.

Sec. 15. By Royal Ordinance it may be ordained, provided that reciprocity is secured, that the protection secured by this Statute shall also be extended to persons carrying on, without the country, such lines of trade as referred to in Sec. 1. In

such case the stipulations of the Statute shall apply, but the following special rules will have to be followed in respect to the trade marks being registered:

1. The application is to be accompanied by evidence showing that the applicant has fulfilled the conditions required, in the other country concerned, in order to acquire protection for the trade mark;

2. In all cases relating to the trade mark, the applicant must acknowledge the Court of Reykjavik Township as his venue, and he must name an attorney residing in this country who may accept lawsuits in his behalf;

3. The trade mark shall not be protected to any further extent nor for any longer time than in the other country.

In respect to trade marks that are registered in a country making corresponding concessions in case of Icelandic trade marks, the following further rules may be stipulated by Royal Ordinance:

4. The trade mark shall be registered, provided that it is not contrary to moral or public order, in the shape in which it is valid in the other country concerned.

5. If any person, not later than four months after the trade mark has been applied for in the other country concerned, makes application for its registration in this country, then such application, with relation to other applications, is to be considered to be filed simultaneously with the application in the other country.

6. If the application is refused by reason of Sec. 5, No. 5, and the applicant, during a lawsuit against the possessor of the mark previously applied for or registered, proves that this originally is a mark used by him which the other person has appropriated, then he may be declared, by judgment, to be entitled to have the mark registered, with exclusive right to use the same for the kind of goods for which he used the mark when the reciprocal protection entered into force, provided that he institutes suit regarding the same within six months after the reciprocal protection entered into force. This does not constitute any restriction, however, as regards the right guaranteed by Sec. 11, paragraph 3.

SEC. 16. The detailed rules concerning the arrangement, form and routine of the Trade Mark Register, with reference to the publications referred to in this Statute, as well as regarding the accounting for the fees due to the Exchequer in consequence of this Statute, will be fixed by the Governor.

SEC. 17. Lawsuits instituted on the basis of Sec. 13, paragraph 2, of this Statute are to be dealt with as public police-

cases, and complaint shall be made only in case some person injured by the transgression of the Statute so petitions.

SEC. 18. Any person may obtain information from the Register, either by inspection of the same or by transcripts, in which, however, no demand may be made for the reproduction of the facsimiles themselves.

For a transcript from the Register or from an original application a fee of 2 Kroner shall be paid to the Exchequer. For inspection of the Register no fee is to be paid.

SEC. 19. This Statute shall become of effect April 1, 1904. All persons concerned will be governed by these presents.

DECREE MAKING THE LAW OF NOVEMBER 13, 1903, COVERING THE PROTECTION OF TRADE MARKS, APPLICABLE TO THE UNITED STATES OF AMERICA

We Christian the Tenth, by the Grace of God, King of Denmark, etc., etc., etc., hereby make known: that inasmuch as the protection of trade marks in the United States of America has been made available—to the same extent as to her own citizens —to all such parties in Iceland as are operating any factory, industrial undertaking, agriculture, mining, commerce or any other trade, we desire by virtue of the law of November 13, 1903, paragraph 15, to issue the following order:

The protection of trade marks, provided by law of November 13, 1903, shall also be extended to such parties in the United States of America as are operating any factory or industrial undertaking, agriculture, mining, commerce or any other trade upon the following conditions:

1) The application should be accompanied by a statement furnishing evidence that the applicant has fulfilled the conditions which are to be observed in the United States of America in order to obtain the said protection.

2) The applicant should adopt the "Reykjavik Byting" as venue in all matters concerning the trade mark, in addition to which he should appoint an attorney who should represent him in lawsuits.

3) The scope of the protection of this trade mark shall extend no further and will be valid no longer than is the custom in the United States of America.

4) The trade mark shall be registered in the shape in which it is registered in the United States, provided its character is not in violation of morals or public justice.

5) If the application for the registration of a trade mark is made in Iceland within four months after the date upon which

it was applied for in the United States of America, such an application shall, in comparison to other applications, be regarded as having been applied for simultaneously with the one made in the United States.

6) If the registration of a trade mark is refused in accordance with paragraph 5, No. 5, and the applicant proves, through the medium of proceeding against the party who has registered the trade mark, that the said mark was originally used by him and that the same has been adopted by the other party, he may be entitled, through the decision of the court, to have the mark registered with sole right of use for the kind of goods, in connection with which the mark was used when the mutual protection became effective, provided he brings action against the other party within six months from the date on which the mutual protection became effective. In this connection, however, no restriction is made with respect to the right granted in paragraph 11, section 3.

This decree becomes effective immediately.

This should be observed by all parties concerned.

Given at Amalienborg, April 16, 1918.

INDIA

No trade mark law. Marks may be placed on record, however, in the Office for Registration of Deeds under the Indian Registration Act, 1877, Act III of 1877. This registration has no legal effect other than that it may be received as evidence of proprietorship and of use.

Indian Merchandise Marks Act, 1889, Act IV of 1889, substantially like Merchandise Marks Act of Great Britain, which see.

ITALY

LAW NO. 4577 OF AUGUST 30, 1868

ARTICLE 1. Whoever shall adopt a mark or other sign for distinguishing the products of his industry, the merchandise of his commerce, and the animals of a breed belonging to him, shall have the exclusive use thereof provided that he effect the deposit prescribed in this law.

The mark or distinctive sign must be different from those already legally used by other persons, and it must indicate the place of origin, the factory and the line of business, in such way as to evidence the name of the person, the style of the society and the denomination of the establishment from which emanate the products or goods; when it is a question of animals and small objects there shall be proposed and approved a special abbreviation or other equivalent sign.

The characteristic signature of the producer, merchant, or proprietor, engraved on products, or reproduced by means of a stamp or any other durable means, or even written by hand, may constitute a mark or distinctive sign.

ART. 2. The industrial or commercial assign or successor that shall wish to preserve the mark of its originator shall make immediate declaration thereof on stamped paper of one lira.

ART. 3. A merchant may not suppress the mark or distinctive sign of the producer of his merchandise without the express consent of the latter; he may, however, affix separately his own mark or the distinctive sign of his commerce.

ART. 4. Distinctive marks and signs, already legally used abroad on products and merchandise of foreign manufacture and commerce that is being carried on in the State, or on animals of foreign breed distributed in the Kingdom, shall be acknowledged and guaranteed, provided that there be observed, with regard to such marks and signs, the prescriptions established for nationals.

ART. 5. There is affirmed the general prohibition against usurpation of the name or the firm of a society or of an individual, and it is likewise prohibited to avail one's self of the commercial style or the insignia of the business, the characteristic emblem, the denomination or title of an association or of a corporate body, whether it be foreign or national, and to affix them upon shops, on objects of industry or of commerce or upon designs, engravings or other objects of art: even when

the style, insignia, emblem, denomination, or name, before mentioned, does not form part of a distinctive mark or sign or is not found registered in conformity with the present law.

ART. 6. The Financial Administration of the State may adopt marks and signs in order to assure the authenticity of the products of its manufacture, and the distribution of goods of its monopoly by conforming itself to the prescriptions of the present law; and this without prejudice to provisions in force, as regards the Administration of the State, in the law that concerns the production and classification of such products.

ART. 7. Whoever shall wish to assure to himself the exclusive use of a mark or distinctive sign in the sense provided for in the preceding articles, shall file with one of the Prefectures of the Kingdom:

a) Two facsimiles of the distinctive mark or sign that he intends to adopt;

b) An original declaration in duplicate, in which, there being expressed the desire to reserve to himself the rights that pertain to him, shall be indicated the kind of goods upon which it is desired to affix the mark or sign, it being noted whether the distinctive mark or sign is to be affixed to goods produced by the declarant or upon merchandise of his commerce;

c) An original description in duplicate of the distinctive mark or sign;

d) A receipt from the local Public Receiver, from which it shall appear that forty lire have been paid by way of fee and expenses for each distinctive sign or mark.

The successors or assigns shall pay a fee of two lire for the transcription of the declaration prescribed in Art. 2.

ART. 8. Upon the acknowledgment of the regularity of the extrinsic part of the documents presented, the Office of the Prefecture shall enter, upon the aforementioned declaration, the annotation of the day and hour at which they were presented.

The Prefecture shall transmit the whole, within a term not exceeding five days, to the Minister of Agriculture and Commerce, who, the said documents having been entered in the Public Register, shall deliver, if there be occasion therefor, certificate of transcription.

The Minister, when the formalities are fulfilled, shall transmit one of the facsimiles of the mark or distinctive sign to the Prefecture, to the end that it be preserved either by the latter or by a Chamber of Commerce, and shall be held at the disposal of the public in the Province in which the concession was initiated.

ART. 9. The certificate shall not guarantee the validity or legality of the distinctive mark or sign, or the quality or origin of the goods, or the existence of the other conditions required, to the end that the certificate be valid and efficacious.

ART. 10. The right to make exclusive use of a distinctive mark or sign, in favor of the declarant, shall commence to run from the date of the annotation made by the Office of the Prefecture. However, for the effects of fines and damages, there shall be immediately published in the *Gazzetta Ufficiale* the concession of the certificate of ownership.

ART. 11. Civil actions, with reference to the ownership of marks and other distinctive signs, shall be lodged in the Civil Tribunals, and the case shall be plead and adjudicated in summary manner.

Criminal actions shall be lodged before the competent Tribunal. Private complaint is not necessary for bringing penal action.

ART. 12. He shall be amenable to a fine of not exceeding two thousand (2000) lire, even in default of any damage to third parties:

1) Who shall have counterfeited a distinctive mark or sign, or who shall have made use thereof knowingly;

2) Who shall knowingly have put in circulation, sold or introduced from abroad, and for commercial uses, goods with counterfeit marks or signs;

3) Who shall have contravened the disposition of Arts. 3, 5 and 6 of the present law;

4) Who, without having precisely counterfeited a distinctive mark or sign, shall have made a fraudulent imitation thereof, or who shall have made use knowingly of a mark or sign fraudulently imitated;

5) Who shall knowingly have put in circulation, sold or introduced from abroad, and for commercial uses, goods with marks or signs fraudulently imitated;

6) Who shall have made use knowingly of a mark or sign, insignia or emblem bearing indication possible of deceiving buyers as to the nature of the products, or who shall have sold products bearing such marks or signs or emblems.

In case of repetition, the fine shall not be in excess of four thousand (4000) lire.

Counterfeit marks or signs, the instruments that have served in the fraud, as well as the goods and objects denounced with such counterfeiting, shall be confiscated.

Marks or signs, insignia or emblems, that are altered shall be redintegrated at the expense of the delinquent.

These penalties shall be applicable without prejudice to damages and injuries and to those greater penalties that are established by the Code of Penal Procedure in cases of falsification.

ART. 13. Any law or decree contrary to the present provisions, effective even in the Venetian and Mantua provinces, is abrogated.

ART. 14. A regulation approved by Royal Decree shall provide more particularly for special rules for the summary publication of certificates delivered by the Government, and for whatever may be requisite for the publication of the present law.

JAMAICA

LAW 37 OF [MAY 23] 1911

Short Title

1. This Law may be cited as the Trade Marks Law, 1911.

Commencement of Act

2. This Law shall come into operation on the first day of March one thousand nine hundred and twelve.

DEFINITIONS

3. In and for the purposes of this Law (unless the context otherwise requires):

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

A "trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Law.

"The register" shall mean the register of trade marks kept under the provisions of this Law.

A "registered trade mark" shall mean a trade mark which is actually upon the register.

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by Rules of Court, (which Rules the Chief Justice with the concurrence of the Puisne Judge is hereby empowered to make) and in other cases, prescribed by this Law or the Rules thereunder.

"The Court" shall mean the Supreme Court of Judicature of Jamaica.

REGISTER OF TRADE MARKS

4. There shall be kept at the General Register Office for the purposes of this Law a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignment and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Registrar General, who is in this Law referred to as the Registrar.

Trust Not to Be Entered On Register

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of Existing Register

6. The register of trade marks existing at the date of the commencement of this Law and all registers of trade marks kept under previous Laws, which are deemed part of the same book as such register, shall be incorporated with and form part of the register. Subject to the provisions of sections thirty-seven and forty-two of this Law the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the laws in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Law.

Inspection of and Extract from Register

7. The register kept under this Law shall at all convenient times be open to the inspection of the public, subject to such regulations and payment of such fees as may be prescribed; and certified copies, sealed with the seal of the General Register Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade Mark Must Be for Particular Goods

8. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable Trade Marks

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark:

Provided always that any special or distinctive word or

words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the first day of April, one thousand eight hundred and eighty-nine, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Law.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured Trade Marks

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on Registration

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

REGISTRATION OF TRADE MARKS

Application for Registration

12. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Law the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal, the Court shall, if

required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error, in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of Application

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to Registration

14. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to

appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the Court bring forward further material for the consideration of the Court.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as here-in-above provided except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar shall have power in proceedings under this section to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in Jamaica, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider

needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of Registration

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the actual receipt of the application for registration, and such date shall be deemed for the purposes of this Law to be the date of registration.

Certificate of Registration

17. On the registration of a trade mark the Registrar shall, if required, issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the General Register Office.

Non-Completion of Registration

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Power to Register Trade Marks Already Registered in England

19. The proprietor of any trade mark registered or deemed to be registered in England under the "Trade Marks Act, 1905" (Imperial Act 5 Edward 7, c. 15.) may, if such trade mark is not already registered or deemed to be registered under this Law in respect of the same goods or description of goods as belonging to some other person, apply to have such trade mark registered under this Law, on lodging with the Registrar a copy purporting to be duly certified and to be sealed with the Seal of the Patent Office of the entry in the Register kept under the said Act relating to such trade mark, including a copy of the mark and disclaimers, if any. It shall not be necessary to advertise any such application and the Registrar may subject to an appeal to the Court refuse any such

application.

If such trade mark is already registered under this Law in respect of the same goods or description of goods in the name of some person other than the applicant, the Registrar shall inform such applicant of the name and address of the person registered as aforesaid.

IDENTICAL TRADE MARKS

20. Except by order of the Court or in the case of trade marks in use before the first day of April one thousand eight hundred and eighty nine, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival Claims to Identical Marks

21. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Court.

Concurrent User

22. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and Transmission of Trade Marks

23. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

Apportionment of Marks on Dissolution of Partnership

24. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Law as to associated trade marks), on the application of the parties interested, permit an appor-

tionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

Associated Trade Marks

25. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined Trade Marks

26. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Law be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of Trade Marks

27. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods for which they are respectively used or proposed to be used; or

(b) statements of number, price, quality, or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and User of Associated Trade Marks

28. Associated trade marks shall be assignable or trans-

missible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Law user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

RENEWAL OF REGISTRATION

Duration of Registration

29. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Law.

Renewal of Registration

30. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on Expiry of Period of Registration

31. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of Unrenewed Trade Mark

32. Where a trade mark has been removed from the register for nonpayment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no bonâ fide trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF THE REGISTER

Correction of Register

33. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,—

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of Assignments, Etc.

34. Subject to the provisions of this Law where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court.

Alteration of Registered Trade Mark

35. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of Register

36. Subject to the provisions of this Law—

(1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any

entry in the register, make such order for making, expunging, or varying such entry, as it may think fit:

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register:

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section:

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Trade Marks Registered Under Previous Laws

37. No trade mark which is upon the register at the commencement of this Law and which under this Law is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the laws in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Law to which he would not have been subject under the Laws then in force.

Non-User of Trade Mark

38. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any bonâ fide intention to use the same in connection with such goods, and there has in fact been no bonâ fide user of the same in connection therewith, or on the ground that there has been no bonâ fide user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of Registered Proprietor

39. Subject to the provisions of this Law—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of Proprietor of Trade Mark

40. Subject to the provisions of section forty-two of this Law and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to Be Primâ Facie Evidence of Validity.

41. In all legal proceedings relating to a registered trade mark (including applications under section thirty-six of this Law) the fact that a person is registered as proprietor of such trade mark shall be primâ facie evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to Be Conclusive After Seven Years

42. In all legal proceedings relating to a registered trade mark (including applications under section thirty-six of this Law) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Law, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section eleven of this Law.

Provided that nothing in this Law shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register

for such similar trade mark in respect of such goods under the provisions of section twenty-two of this Law.

Unregistered Trade Mark

43. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the first of April one thousand eight hundred and eighty-nine, and has been refused registration under this Law or any law repealed by this Law. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement

44. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of Name, Address, or Description of Goods

45. No registration under this Law shall interfere with any bonâ fide use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person or any bonâ fide description of the character or quality of his goods.

"Passing Off" Action

46. Nothing in this Law contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of Validity

47. In any legal proceedings in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceedings in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to Have Notice of Proceeding for Rectification

48. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall

appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

COSTS

Costs of Proceedings Before the Court

49. In all proceedings before the Court under this Law the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Mode of Giving Evidence

50. In any proceeding under this Law before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the Registrar shall think it right so to do, he may (with the consent of the parties) take evidence vivâ voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken vivâ voce the Registrar shall have power to require the attendance of witnesses and the production of documents and to take evidence on oath, and shall for the purposes of any proceeding under this Law before him have all the powers possessed by the Registrar of the Supreme Court in relation to proceedings in the Supreme Court, and the Court shall have power to enforce the orders of the Registrar as if they were those of a Judge.

Sealed Copies to Be Evidence

51. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the General Register Office, shall be admitted in evidence in all Courts in this Island, and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to Be Evidence

52. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is author-

ised by this Law, or Rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of Discretionary Power By Registrar

53. Where any discretionary or other power is given to the Registrar by this Law or Rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal From Registrar

54. Except where expressly given by the provisions of this Law or Rules made thereunder there shall be no appeal from a decision of the Registrar but the Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-six of this Law), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

55. Where by this Law any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with Rules made under this Law or in particular cases by special leave of the Court be done by or to an agent of such party duly authorised in the prescribed manner.

Registrar May Take Direction of Law Officer

56. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Law, apply to His Majesty's Attorney-General for Jamaica for directions in the matter.

RULES AND FORMS

Power of Governor in Privy Council to Make Rules and Prescribe Forms

57. (1) Subject to the provisions of this Law the Governor in Privy Council may from time to time make such rules, prescribe such forms, and generally do such things as he may think expedient—

(a) For regulating the practice under this Law:

(b) For classifying goods for the purposes of registration of trade marks:

(c) For making or requiring duplicates of trade marks and

other documents:

(d) For securing and regulating the publishing and selling or distributing in such manner as he may think fit, of copies of trade marks and other documents:

(e) Generally, for regulating the business of the office in relation to trade marks and all things by this Law placed under the direction or control of the Registrar.

(2) Rules under this section shall, when made, be published in the Jamaica Gazette and shall whilst, in force, be of the same effect as if they were contained in this Law.

FEES

58. There shall be paid in respect of applications and registration and other matters under this Law such fees as may be prescribed by the Governor in Privy Council, and such fees shall be paid into the Treasury to the credit of the General Revenue of the Island.

SPECIAL TRADE MARKS

Standardization, Etc., Trade Marks

59. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Court may, if it shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Court.

Exemption from Stamp Duty

60. All certificates and certified copies given by the Registrar under this Law shall be exempt from Stamp Duty.

OFFENCES

Falsification of Entries in Register

61. If any person makes or causes to be made a false entry in the register kept under this Law, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any term not exceed-

ing two years with or without hard labour.

Penalty On Falsely Representing a Trade Mark As Registered

62. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction before a Resident Magistrate or two Justices of the Peace to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for any term not exceeding two months.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark.

ROYAL ARMS

Unauthorised Assumption of Royal Arms

63. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

Repeal: Savings

64. Law 17 of 1888, entitled "The Registration of Trade Marks Law, 1888," Law 6 of 1889 entitled "The Registration of Trade Marks Law, 1888, Amendment Law, 1889," and Law 10 of 1905, entitled "The Registration of Trade Marks Law, 1888, Amendment Law, 1905," are hereby repealed, but this repeal shall not affect any rule, table of fees, or classification of goods made under any enactment so repealed, but every such rule, table of fees, or classification of goods shall continue in force as if made under this Law until superseded by rules, tables of fees, or classification under this Law.

JAPAN

LAW NO. 99 OF APRIL 29, 1921*†

ARTICLE 1. Persons who desire exclusively to use a trade mark in order to distinguish merchandise as being produced, manufactured, worked upon, selected, certified, dealt with or sold by them in connection with their business, may have such trade mark registered.

In order to be registrable, a trade mark must consist of written characters, devices, signs, or a combination thereof, and must also be special and distinctive.

In having a trade mark registered, it is permissible to limit the colour or colours to be applied thereto.

ART. 2. The following trade marks are non-registrable:

1) Those which contain a device identical with, or similar to, the Imperial Chrysanthemum Crest;

2) Those which are identical with, or similar to, the national flag, the military or naval flags, a decoration, a medal of merit, a badge or those identical with, or similar to, a foreign national flag;

3) Those which are identical with, or similar to, a Red Cross badge on a white ground or the designation of, or written characters for, Red Cross or Geneva Cross;

4) Those which are liable to disturb public order or morals;

5) Those containing a likeness of or the name, appellation, or trade name of another person, except with the consent of such other person;

6) Those which are identical with, or similar to, marks customarily used for identical or similar merchandise;

7) Those which have a device identical with, or similar to, a medal, certificate of merit or testimonial awarded by an exhibition held by the Government or the Administration of a Do, Fu or Ken, or an equivalent thereto, or with the permission of the Government, or by an Exhibition held in a foreign country either by or with the permission of the authorities; but this does not apply when a recipient of such a medal, certificate of merit, or testimonial desires to use the device thereof as a part of his trade mark;

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*Due to the multiplicity of references made herein to the old Trade Mark Law (of April 2, 1909), and to the existing Patent Law (of April 29, 1921), the provisions in question are given immediately following the present text.

† From "Japanese Laws and Ordinances concerning Patents, Trade-marks, Designs and Utility Models," by J. E. de Becker, D.C.L., Yokohama, 1922.

8) Those which are identical with, or similar to, a mark belonging to another person and widely known among dealers and consumers, and which are used for identical or similar merchandise;

9) Those which are identical with, or similar to, a registered trade mark of another person and which are used for identical or similar merchandise;

10) Those which are identical with, or similar to, a trade mark belonging to another person, in respect of which one year has not yet elapsed since its registration ceased to be valid; but this does not apply if the trade mark belonging to the other person had not been used for at least one year before its registration ceased to be valid;

11) Those which are liable to cause mistakes or confusion of merchandise.

Even when a trade mark is non-registrable because a part liable to be regarded as an essential part does not by itself fulfill the condition of being special and distinctive as provided in paragraph 2 of the foregoing article, or comes under No. 6 of the foregoing paragraph, if the applicant states that he claims no right in respect of that part, the trade mark will be registered.

ART. 3. Trade marks belonging to the same person, which are similar to each other and which are to be used for identical merchandise or trade marks belonging to the same person which are identical with, or similar to, each other, and which are to be used for similar merchandise, are registered only if application is made for their registration as "associated trade marks."

ART. 4. In case there is a conflict of separate applications for registration in respect of trade marks which are identical with, or similar to, each other, and which are to be used for identical or similar merchandise, registration will only be made for the first applicant; but if the applications are of the same day, registration will be made according to the mutual agreement of the parties, and if no agreement is arrived at, none will be registered.

If, in respect of a trade mark used on merchandise exhibited at an exhibition held by the Government, or the Administration of a Do, Fu or Ken, or an equivalent thereto, or with the permission of the Government, or at an international exhibition held by or with the permission of the authorities in the territory of a country belonging to the Union for the Protection of Industrial Property, the user of such trade mark applies for the registration thereof within six (6) months from the day of the opening thereof, the application is deemed to have been made on the day of the opening.

The provisions of the preceding paragraph do not, however, apply to any person who has failed to give the notice required, in cases where it has been provided by ordinance that previous notice shall be given in regard to exhibits mentioned in the foregoing paragraph.

If it is found necessary to extend protection to trade marks used on merchandise exhibited at an exhibition other than one of the international exhibitions mentioned in paragraph 2, held in the territory of a foreign country either by the authorities or with the permission of the authorities, the matter will be provided for by Imperial Ordinance.

ART. 5. The applicant for registration of a trade mark shall designate the merchandise on which the trade mark is to be used under the classification fixed by ordinance.

ART. 6. The right arising from an application for the registration of a trade mark can only be transferred together with the business therein.

In case the right arising from an application for the registration of a trade mark is jointly owned, none of the joint owners can transfer his share therein except with the consent of the other joint owner or owners.

Succession to the right arising from an application for the registration of a trade mark cannot be set up against third persons unless the successor notifies the change in the name of the applicant. If the notifications are of the same day, the mutual agreement of the parties shall govern, and if no agreement is arrived at, the succession can be set up by none of them against third persons.

ART. 7. A trade mark right comes into existence by registration.

A person entitled to a trade mark right has the right exclusively to use the trade mark for the merchandise designated under the provisions of Art. 5. In case a trade mark right conflicts with a design right in respect of which application was made prior to the day of application (respecting the trade mark) by reason of the mode in which the registered trade mark is employed, the person entitled to such trade mark right cannot use the registered trade mark in such a mode except with a working permission from the person entitled to the design right.

ART. 8. The effect of a trade mark right does not extend to the indication by methods in general use of one's name, appellation, or trade name, or of the common name of one's merchandise, its place of production, grade, quality, efficacy, method of use, manner of manufacture, time, quantity, shape or price, but this does not apply if, after the registration of the trade mark,

a name, appellation, or trade name has been used in bad faith.

The effect of a trade mark right does not extend to that part in respect of which it has been stated, under the provisions of Art. 2, paragraph 2, that no right is claimed.

ART. 9. Any person who has, in respect to identical or similar merchandise used in good faith from before the application for the registration of a registered trade mark of another person, a mark identical with, or similar to, the same, and which is widely known among dealers and consumers, may continue the use thereof notwithstanding the registration of the trade mark of the other person. The same applies to a person who has succeeded to the use of the mark together with the business or pursuit.

In the case contemplated in the foregoing paragraph, the person entitled to the trade mark right may require the user of the mark to add a suitable indication for preventing a confusion of merchandise.

ART. 10. The period of duration of a trade mark right terminates in twenty (20) years from the day of registration.

ART. 11. The period of duration mentioned in the foregoing article may be renewed on the application for a registration of renewal; excepting when the trade mark under such application for registration of renewal falls within the purview of Art. 2, paragraph 1, Nos. 1-4, 6, 7, or 11.

ART. 12. A trade mark right may only be transferred together with the business.

A trade mark right may be transferred in separate parts corresponding to sorts of merchandise specified in accordance with the provisions of Art. 5.

A trade mark right in associated trade marks cannot be transferred in divisions.

When a trade mark right is jointly owned, none of the joint owners can transfer his share therein except with the consent of the other joint owner or owners.

ART. 13. A trade mark right is terminated on the abandonment of the business by the person entitled to the trade mark right.

The trade mark right in a trade mark which has been registered as a foreign registered trade mark is terminated when the trade mark right in the home country is terminated.

ART. 14. When it falls within the purview of any one of the following numbers the registration of a trade mark shall be cancelled by a trial:

1) If the person entitled to the trade mark right has, without good reason, not used the trade mark in the Empire for

one (1) year from the day of registration or suspended its use for three consecutive years; but this does not apply if the mark has been used on one of the articles of merchandise designated under the provisions of Art. 5 or one of the associated marks has been used;

2) If the trade mark right has been transferred otherwise than by inheritance and application for the registration of the transfer of the trade mark right has not been made within one (1) year from the day of the transfer.

The provisions of No. 1 of the foregoing paragraph do not apply to trade marks registered as foreign registered trade marks.

ART. 15. If a person entitled to a trade mark right has used his registered trade mark after purposely making such an addition thereto, or alteration therein, as is liable to cause a mistake or confusion of merchandise, the registration of the trade mark shall be cancelled by a trial.

A person, the registration of whose trade mark has been cancelled under the provisions of the foregoing paragraph, cannot obtain registration of an identical or similar trade mark for identical or similar merchandise for five (5) years from the day on which the judgment in trial directing cancellation has become finally binding or the court judgment has been rendered to the same effect.

ART. 16. The registration of a trade mark shall be declared void by trial when it falls within the purview of any one of the following numbers:

1) If the registration has been made contrary to the provisions of Arts. 1-4 or paragraph 2 of the foregoing article;

2) If the registration has been made contrary to the provisions of Art. 32 of the Patent Law which in virtue of Art. 24 hereof apply *mutatis mutandis* (to trade marks);

3) If the registration has been made on behalf of a person who is not the successor to the right which has arisen from the application for the registration of the trade mark;

4) If the registration has been made contrary to a treaty, or an equivalent thereto, as specified to in Art. 33 of the Patent Law which in virtue of Art. 24 hereof applies *mutatis mutandis,* and such contravention is to be regarded as equivalent to those set forth in Nos. 1-3, inclusive;

5) If the registration has become contrary to the provisions of Art. 32 of the Patent Law, which in virtue of Art. 24 hereof apply *mutatis mutandis,* or if it has become contrary to a treaty, or an equivalent thereto, referred to in Art. 33 of the Patent Law, and such contravention is to be regarded in the

same light as those mentioned in Nos. 1-3.

When the registration of a renewal of the period of duration of a trade mark right falls within the purview of any one of the following numbers it shall be declared void by trial:

1) If the registration has been made contrary to the excepting clause of Art. 11;

2) If the registration has been made in favour of a person other than the person entitled to the trade mark right.

The registration of a trade mark or of a renewal of the period of duration of a trade mark right shall be declared void under the provisions of the preceding two paragraphs even after the trade mark right has been terminated.

ART. 17. In the Patent Office a Trade Mark Register shall be kept in which shall be registered the creation, transfer, alteration and termination of trade marks and other matters specified in laws and ordinances.

Regulations respecting registrations shall be provided by ordinance.

ART. 18. When a decision by an Examiner or a patent judgment directing that a trade mark shall be registered has become finally binding, or a court judgment has been rendered to the same effect, it shall be registered in the Trade Mark Register.

ART. 19. The Patent Office shall publish a *Trade Mark Gazette* in which shall be announced the particulars prescribed in this Law and other necessary matters relating to registered trade marks.

ART. 20. Persons for whom a trade mark is registered shall, at the time of registration, pay a single lump sum of thirty yen (Yen 30) as a registration fee for each case.

A person for whom a renewal of the period of duration of a trade mark right is registered shall, at the time of registration, pay a single lump sum of fifty yen (Yen 50) as registration fee for each case.

ART. 21. When an application is made for the registration of a trade mark or of a renewal of the period of duration of a trade mark right, an Examiner shall be caused to examine it.

ART. 22. A trial may be demanded in respect of the following matters, in addition to those provided in the Law or an Imperial Ordinance issued on the basis of this Law:

1) Cancellation of the registration of a trade mark under the provisions of Arts. 14, 15 or 31;

2) Invalidity of the registration of a trade mark or of a renewal of the period of duration of a trade mark right under

the provisions of Art. 16;

3) Determination of the limits of a trade mark right.

A trial for cancellation under No. 1 of the foregoing paragraph, or a trial for invalidity under No. 2, can only be demanded by persons interested or by an Examiner; but an Examiner cannot demand a trial for invalidity on the ground that the registration contravenes the provisions of Art. 2, paragraph 1, Nos. 5, 8-10; Art. 3 or Art. 4, or that it falls within the purview of Art. 16, paragraph 1, No. 3, or paragraph 2, No. 2.

A trial for determination under paragraph 1, No. 3, can only be demanded by persons interested.

ART. 23. A trial for invalidity under paragraph 1, No. 2, of the foregoing article cannot be demanded if five (5) years have elapsed from the day of registration; but this does not apply when it is based on the allegation that the registration is contrary to the provisions of Art. 2, paragraph 1, Nos. 1-4, 6, 7 and 11, the excepting clause of Art. 11, Art. 15, paragraph 2; or Arts. 32 or 33 of the Patent Law, which, in virtue of the provisions of Art. 24 hereof apply *mutatis mutandis*.

ART. 24. The provisions of Art. 13, Arts. 16-30, Art. 32, Art. 33, Art. 45, Art. 58, paragraphs 1 and 3, Art. 68, Art. 71, Art. 72, Art. 73, paragraphs 1, 2 and 4, Arts. 74-77, Arts. 80-83, Arts. 86-105, Art. 107, Arts. 109-115, Arts. 117-124 and Art. 128 of the Patent Law apply *mutatis mutandis* to trade marks; but the provisions of Art. 73, paragraphs 1, 2 and 4, and Arts. 74-77 (of the Patent Law) do not apply *mutatis mutandis* to applications for the registration of a renewal of the period of duration of trade mark rights.

ART. 25. A person who, after a judgment in a trial declaring the registration to be void has become finally binding, or a court judgment has been rendered to the same effect, has used, in good faith, from prior to the registration of a demand for retrial, an identical or similar registered trade mark widely known among dealers and consumers for identical or similar merchandise, may continue the use of such registered trade mark, even though the registration thereof has been declared void on the ground that the trade mark is contrary to the provisions of Art. 2, paragraph 1, No. 9, because it conflicts with the trade mark whose registration has been restored as a result of retrial. The same applies to a person who has succeeded to the use of the trade mark in question together with the business.

The provisions of Art. 9, paragraph 2, apply *mutatis mutandis* to the case mentioned in the foregoing paragraph.

ART. 26. A person desiring exclusively to use a mark for

merchandise in connection with an occupation not conducted for profit may have such mark registered.

Marks under the foregoing paragraph shall be deemed to be trade marks and shall be governed by the provisions of this law relating to trade marks.

ART. 27. A juridical person organized by persons in the same business, or by business men intimately connected, with the object of promoting the common business interests of the members of the body, may have its mark registered as a corporation mark in order to enable the members of such body to make exclusive use thereof for the merchandise connected with their business.

Except as otherwise provided in this law, corporation marks shall be deemed to be trade marks and shall be governed by the provisions of this law relating to trade marks.

ART. 28. A juridical person desiring to obtain registration of a corporation mark in accordance with the provisions of the preceding article shall provide in its Articles of Association particulars relating to the use of such corporation mark and obtain the approval of the Director of the Patent Office. The same applies when such particulars are changed.

ART. 29. A claim for damages for an infringement of a corporation mark right also includes damages done to the members of the body.

ART. 30. In case a juridical person referred to in Art. 27 is amalgamated or divided, if the right arising from an application for the registration of a corporation mark, or a corporation mark right, is to be transferred from one juridical person to another, the approval of the Director of the Patent Office shall be obtained. In such case the provisions of Art. 28 apply *mutatis mutandis*.

ART. 31. In any of the cases referred to in any of the following numbers, the registration of a corporation mark shall be cancelled by a trial:

1) If a juridical person has caused or permitted the members to use the corporation mark contrary to the provisions of the Articles of Association approved by the Director of the Patent Office under the provisions of Art. 28 or the preceding article (Art. 30), or connived at such use;

2) If a juridical person has caused or permitted persons other than the members thereof to use the corporation mark, or connived at the use thereof by persons other than the members.

A juridical person, the registration of whose corporation mark has been cancelled under the provisions of the preceding paragraph, cannot obtain registration of an identical or similar

corporation mark for identical or similar merchandise for a period of five (5) years from the day of cancellation. In this case the provisions of Art. 16 and Art. 22 apply *mutatis mutandis.*

Art. 32. A juridical person for which a corporation mark is registered shall, at the time of registration, pay a single lump sum of one hundred yen (Yen 100) as a registration fee for each matter.

A juridical person for which a renewal of the period of duration of a corporation mark right is registered shall, at the time of registration, pay in a single lump sum of one hundred and fifty yen (Yen 150) as a registration fee for each matter.

Art. 33. The provisions of the preceding six (6) articles (27-32) apply *mutatis mutandis* when a public juridical person desires to obtain registration of a corporation mark in order to cause it to be exclusively used by the business men within its district for merchandise connected with their business.

Art. 34. Persons falling within the purview of any one of the following numbers shall be punished with penal servitude for not more than five (5) years, or a fine of not more than five thousand yen (Yen 5,000):

1) Persons who have used for identical or similar merchandise a trade mark identical with, or similar to, a registered trade mark of another person, or who have delivered or sold such merchandise or hold it in their possession with the object of delivering or selling same;

2) Persons who have delivered or sold a trade mark identical with, or similar to, a registered trade mark of another person with the object of causing it to be used for identical or similar merchandise, or who hold it in their possession with the object of delivering or selling same;

3) Persons who, with the object of using it, or causing it to be used for identical or similar merchandise, have counterfeited or imitated a registered trade mark of another person;

4) Persons who, with the object of delivering or selling it, have imported (either from foreign countries or from the colonies) identical or similar merchandise on which is used a trade mark identical with, or similar to, a registered trade mark of another person;

5) Persons who, with the object of using it, or causing it to be used, for identical or similar merchandise, have imported (either from foreign countries or from the colonies) a trade mark identical with, or similar to, a registered trade mark of another person;

6) Persons who, with the object of counterfeiting or imitating a registered trade mark of another person, or of causing the same to be counterfeited or imitated, manufacture, deliver, sell, or have in their possession, tools, implements, or appliances required for the purpose;

7) Persons who have, with reference to identical or similar merchandise, used a mark identical with, or similar to, a registered trade mark of another person in advertisements or signboards or in hand-bills, price-lists, etc., or trade documents used in business.

ART. 35. Persons falling within the purview of any one of the following numbers shall be punished with penal servitude for not more than three (3) years or a fine of not more than three thousand yen (Yen 3,000):

1) Persons who, by means of a fraudulent act, have obtained registration of a trade mark or of a renewal of the period of duration of a trade mark right, or obtained a judgment in a trial or court judgment to the same effect;

2) Persons who have used on goods an unregistered trade mark with a marking for a registered trade mark, or with an ambiguous indication liable to be confounded with a marking for a registered trade mark, or those who have delivered or sold such goods, or hold them in their possession with the object of delivering or selling same;

3) Persons who have used in advertisements, on sign boards or in hand-bills, price-lists, etc., or trade documents used in business, an unregistered trade mark with a marking for a registered trade mark, or with an ambiguous indication liable to be confounded with a marking for a registered trade mark.

ART. 36. If a lawfully sworn witness, expert or interpreter, has made a false statement before the Patent Office, or before a Court or public office requisitioned by the Patent Office, he shall be punished with penal servitude of from three (3) months to ten (10) years.

If a person who has committed an offence under the foregoing paragraph voluntarily denounces himself before a decision by an examiner or judgment in a trial has been given in the case, his penalty may be either commuted or entirely remitted.

ART. 37. If a witness, expert or interpreter, duly summoned by the Patent Office, fails, without good reason, to appear or to do his duty, he shall be punished with a minor fine of not exceeding fifty yen (Yen 50).

The provisions of Arts. 206-208 of the Law of Procedure in Non-Contentious Matters apply *mutatis mutandis* to fines under

the foregoing paragraph.

ART. 38. A person who, without being a Patent Attorney, carries on the business of representation in matters to be done *vis à vis* the Patent Office in connection with trade marks shall be punished with penal servitude for not more than one (1) year or a fine of not more than one thousand yen (Yen 1,000).

SUPPLEMENTARY PROVISIONS

ART. 39. The date of enforcement of this law shall be fixed by Imperial Ordinance.*

ART. 40. Unless otherwise provided in these supplementary provisions, the registration of trade marks and of renewal of the period of duration of trade marks rights, dispositions and proceedings under the old law shall be deemed to have been made or taken under this law.

The foregoing paragraph also applies to applications, demands, and other proceedings made or taken under the old law in respect of trade marks.

ART. 41. Applications for the registration of trade marks or of renewal of the period of duration of trade mark rights and matters relating to the cancellation of registrations of trade marks actually pending at the time when this law comes into force shall be dealt with in accordance with the old law.

With regard to the period allowed for filing an objection to a judgment in a trial served prior to the enforcement of the law, the old law governs.

ART. 42. As regards the registration of trade marks or of renewal of the period of duration of trade mark rights under the old law, even when the registration has been made subsequent to the enforcement of this law, the provisions of Art. 11 of the old law shall remain effective, and within the scope of the application of the provisions of the said article the provisions of the old law mentioned in the said article will also remain effective; and the registration shall be declared void by trial only when it falls within the purview of the provisions of the said article. In such case the provisions of paragraph 2 of the Supplementary Provisions of the old law shall remain effective and, within the scope of the application of the provisions of the said paragraph, the provisions of the old law mentioned in the said paragraph shall also remain effective.

ART. 43. A trial for invalidity under the foregoing article on the ground that the registration is contrary to the provision of Art. 1 or Art. 2, No. 5, of the old law cannot be demanded when five (5) years have elapsed from the day of en-

* January 11, 1922.

forcement of this law in regard to the registration of a trade mark or renewal of the period of duration of a trade mark right made prior to the enforcement of this law.

A trial for invalidity under the foregoing article on the ground that the registration is contrary to the provisions of Art. 2, No. 8 or 9; Art. 3, or Art. 4, paragraph 2, of the old law cannot be demanded when three (3) years have elapsed from the day on which the registration of the trade mark or of renewal of the period of duration of the trade mark right was published in the *Trade Mark Gazette.*

ART. 44. Even after the enforcement of this law, persons who have committed an offence under Art. 23 of the old law prior to the enforcement of this law shall not be prosecuted except upon complaint.

TRADE MARK LAW NO. 25 OF APRIL 2, 1909*

ARTICLE 1. A person who desires exclusively to use a trade mark in order to distinguish goods as being produced, manufactured, worked, selected, certified, dealt with or sold by him as a business, may have such trade mark registered in accordance with this law.

In order to be registered, a trade mark must consist of characters, devices, signs or a combination thereof, and must have a specially distinctive appearance.

In registering a trade mark it is permissible to limit the colours which are to be applied to it.

ART. 2. The following trade marks are not registered:

1) Those which contain a device identical with, or similar to, the Imperial Chrysanthemum Crest;

2) Those which are identical with, or similar to, the national flag, the military or naval flags, or an Order, a medal of merit or a badge or to a foreign national flag;

3) Those as to which there is an apprehension that they may be prejudicious to public order or morals or may deceive the public;

4) Those which are identical with, or similar to, a mark generally used for identical goods;

5) Those which are identical with, or similar to, a mark known to the public as belonging to another person, and which are to be used for identical goods;

6) Those which are identical with, or similar to, the badge

*See Footnote to Japan: Trade Mark Law of April 29, 1921.

of the Red Cross on white ground or to the denomination or characters of "Red Cross" or "Geneva Cross";

7) Those which have a device identical with, or similar to, a medal, diploma or certificate awarded at an exhibition or a competition show held by the Government, or by a Do, Fu or Ken or sanctioned by the Government, or at an exhibition held in a foreign country by the Government, or at an international exhibition held in a foreign country with the permission of the Government; but this does not apply when a person who has received such a medal, diploma, or certificate, desires to use the same as a part of his trade mark;

8) Those showing a likeness, the name or the trade name of another person or the denomination of a juridical person or of an association, unless such person or association has given permission;

9) Those which are identical with, or similar to, a trade mark belonging to another person, in regard to which a year has not yet expired since its registration has lost its validity; but this does not apply to those which are identical with, or similar to, a trade mark which, before its registration lost its validity, had not been used for a year or longer.

ART. 3. When there are two or more persons each of whom has a right to obtain registration for an identical or similar trade mark to be used for identical goods, only that for which application has been made first shall be registered. If the applications are of the same day, the mutual agreement of the parties concerned shall govern, and if the parties concerned do not agree, none will be registered.

If a person applies for the registration of a trade mark identical with, or similar to, that which he in good faith has used for identical goods before the first day of July, 1899, he may obtain such registration, irrespective of the provisions of Art. 2, No. 5, and of the foregoing paragraph.

One's own trade marks similar to each other, which are to be used for identical goods, are registered only if application is made for their registration as "associated trade marks."

ART. 4. The right arising from an application for the registration of a trade mark can be transferred only together with the business.

Succession to a right as mentioned in the foregoing paragraph cannot be set up against third persons, unless the change in the name of the applicant has been notified. If the notifications are of the same day, the mutual agreement of the parties concerned shall govern, and if the parties concerned do not

agree, none of them can set up the succession against third persons.

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ART. 11. If the registration of a trade mark or the renewal of the period of duration of a trade mark right is in contravention of Arts. 1-3 and 4, paragraph 2 of Art. 22, it shall be declared invalid by trial.

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ART. 22. An alien who has no domicile or no place of business within the Empire cannot enjoy a trade mark right or a right relating thereto, unless there is a provision to that effect in a Treaty or a similar Convention.

If there are in a Treaty or a similar Convention special provisions with regard to trade marks, such provisions shall govern.

ART. 23. A person who comes under any of the following cases shall be punished by penal servitude for not more than five years, or by a major fine of not more than one thousand yen:

1) A person who uses for identical goods the registered trade mark of another person, or vessels, or wrappings, etc., bearing such trade mark, or who delivers or sells such goods or has them in his possession with intention to deliver or sell them;

2) A person who, with intention to have them used for identical goods, delivers or sells the registered trade mark of another person, or vessels, or wrappings, etc., bearing such trade mark, or who has them in his possession with intention to deliver or sell them;

3) A person who, with intention to use it or to have it used for identical goods, counterfeits or imitates the registered trade mark of another person;

4) A person who, with intention to have it used for identical goods, delivers or sells a counterfeited or imitated trade mark, or who uses it for identical goods;

5) A person who delivers or sells identical goods for which a counterfeited or imitated trade mark is used, or who has such goods in his possession with intention to deliver or sell them;

6) A person who, with intention to deliver or sell them, imports goods for which a trade mark identical with, or similar to, the registered trade mark of another person is used, or who delivers or sells such goods or has them in his possession with intention to deliver or sell them;

7) A person who, with intention to counterfeit or imitate the registered trade mark of another person, manufactures, delivers, sells or has in his possession implements serving for

such purpose;

8) A person who in advertisements, on sign boards, in handbills, price-lists, or any other commercial papers used in business, makes use for identical goods of a trade mark identical with, or similar to, the registered trade mark of another person.

The offences mentioned in the foregoing paragraph are prosecuted on complaint.

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SUPPLEMENTARY PROVISIONS

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As to trade marks registered under the old law the provisions of Art. 2, No. 6 to No. 8,* of this law do not apply for the time of their duration; and the periods mentioned in Art. 9† are computed from the day when this law takes effect.

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PATENT LAW OF APRIL 29, 1921‡

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ARTICLE 13. The calculation of legal or appointed terms (periods of time) under this law, or ordinances issued on the basis of this law, shall be governed by the following provisions, namely:

1) The first day of a term shall not be reckoned in, except the term begins at 0 a. m. (immediately after 12 p m. on the previous day);

2) If a term is fixed by the month or by the year, the calendar shall govern; but if the term does not begin to run at the beginning of a month or year, it shall mature on the day next preceding the day falling in the last month or year and corresponding to the day from which it is calculated. If there is no such corresponding day in the last month, however, the term shall mature on the last day of that month.

If the last day of a legal or appointed term for an application, a demand, or any other proceeding relating to a patent falls on a Sunday or a general holiday, the day next following that day shall be the last day of the term.

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ART. 16. Unless otherwise provided by ordinance, no person who is neither domiciled nor resident within the Empire can make an application or a demand or take any other pro-

*Art. 2, Nos. 6, 7 and 8, of the Law of 1909 in question, are essentially the same as Art. 2, Nos. 3, 7 and 5, respectively, of the Law of 1921.

†Essentially the same as Art. 14 of the Law of 1921.

‡See Footnote to Japan: Trade Mark Law of April 29, 1921.

ceeding in regard to a patent, or assert a patent right or any other right relating to a patent except through a representative.

In addition to powers specially granted, a representative applying, demanding or asserting under the provisions of the foregoing paragraph represents his principal in regard to any proceeding under this law or any ordinance issued on the basis of this law as well as in any civil action, private criminal action and criminal accusion.

The appointment of, or a change in, a representative of a patent or of a person who has a registered right in a patent, and who takes a proceeding or makes an assertion under the provisions of paragraph 1, or his powers of representation or any change in or the extinction of the same cannot be set up against third persons unless registered.

ART. 17. The appointment of, or a change in, a representative of a person making an application or demand or any other proceeding relating to a patent, but who is not a representative contemplated in paragraph 3 of the foregoing article, or his powers of representation or change in, or the extinction of, the same, cannot be set up against the Patent Office unless it be notified to the Patent Office.

ART. 18. If there are two or more representatives in respect to a patent, they represent their principal jointly and/or severally as against the Patent Office.

ART. 19. Should the Director of the Patent Office consider a representative relating to a patent as unfit to act as such, he may order that another representative be appointed.

Should the Director of the Patent Office or a presiding patent judge consider that a party, or an intervener, or a person objecting to a patent, or the representative of any of such persons is not qualified to carry out proceedings or make statements, he may order that the party be represented by a patent agent.

Any act done as against the Patent Office, after an order has been made under the two preceding paragraphs, either by the representative referred to in paragraph 1, or the party, intervener, or person objecting to a patent or representative referred to in the foregoing paragraph may be declared valid.

ART. 20. Representation as a business in matters to be done as against the Patent Office can only be undertaken by patent agents.

ART. 21. Two or more persons who conjointly make an application or demand or take any other proceeding in regard to a patent, or the co-owners of a patent right, are represented by each other as against the Patent Office, except when a special

representative has been appointed and the Patent Office has been notified of the fact.

The provisions of Art. 17 apply *mutatis mutandis* to the representative referred to in the proviso of the foregoing paragraph.

ART. 22. In case a patentee is neither domiciled nor resident in the Empire, the domicile or residence of his representative under Art. 16, paragraph 2, or, if there is no representative, the seat of the Patent Office shall be deemed the "seat of property" in the sense of Art. 17 of the Code of Civil Procedure.

ART. 23. For the benefit of a person residing in a foreign country or at a place difficult of access, the Director of the Patent Office may, either *ex officio* or on application, extend any legal term (period) for a proceeding to be taken as against the Patent Office.

ART. 24. If a person who has made an application or demand, or taken any other proceeding, has omitted to observe any appointed time respecting any subsequent act connected therewith, or has omitted to pay in patent fees to be paid at the time of obtaining registration, the Director of the Patent Office may, unless otherwise provided by this law, declare invalid such application, demand or other proceeding.

In case an application or demand or any other proceeding has been declared invalid under the provisions of the foregoing paragraph, if it is deemed that the neglect of the term has been caused by a pardonable impediment, the Director of the Patent Office or the presiding patent judge may release the party from the consequences of the neglect on demand within fourteen (14) days from the day on which such impediment has ceased to exist and within one (1) year after the expiration of the term in question.

ART. 25. In case a legal term has been neglected by a natural calamity or any other unavoidable event, the Director of the Patent Office or the presiding patent judge may release the party from the consequences of the neglect on demand within fourteen days from the day on which the impediment has ceased to exist and within one (1) year after the expiration of the term in question; but this shall not apply to the term for making an objection to a patent under Art. 74.

ART. 26. As regards the time when the transmission of papers and other articles to be transmitted to the Patent Office takes effect, it shall be provided by ordinance.

ART. 27. The effect of any proceeding taken by or against a patentee or a person having a right relating to a patent under this law or any ordinance issued against this law shall extend to

the successor to such patent right or right relating to a patent.

ART. 28. In case a patent right or a right relating to a patent has been transferred while a case is pending in the Patent Office, the proceedings may be continued as against the successor.

ART. 29. Apart from what is provided in this law, provisions for the interruption or stay of proceedings pending in the Patent Office or continuation of proceedings interrupted or stayed shall be made by ordinance.

ART. 30. Any person who in respect to a patent desires to have a certificate, a duplicate copy of Letters Patent, a copy of papers or drawings made, or to inspect or copy papers, may apply to the Director of the Patent Office, but such application will not be granted by the Director of the Patent Office in the case of matters which he considers require secrecy.

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ART. 32. No alien who is neither domiciled nor resident in the Empire can enjoy a patent right or a right relating to a patent unless there be provisions (to the contrary) in a Treaty or something similar thereto.

ART. 33. If, in regard to patents, there are special provisions in a Treaty or something similar thereto, such provisions shall govern.

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ART. 45. The transfer, extinction by surrender (waiver), or restriction respecting the disposal of a patent right or the creation, transfer, alteration, extinction, or restriction respecting the disposal of a right of pledge whose subject is a patent right, cannot be set up against third persons unless it has been registered.

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ART. 58. When a patent has been invalidated, the patent right is considered not to have existed *ab initio;* but in case a patent has been invalidated under the provisions of paragraph 1, No. 5, of the foregoing article, the patent right is considered not to have existed as from the time when the patent came under the said number.

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When a patent has been cancelled or a right of working under the provisions of Art. 42 has been cancelled, the patent right or the right of working loses its effect for the future.

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ART. 68. Any patent fee already paid will not be refunded.

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ART. 71. The provisions of Art. 91 shall apply *mutatis*

mutandis to the exclusion of Examiners from the participation in examination.

ART. 72. When the Examiner finds that the application should be refused, the reason for refusal shall be indicated to the applicant and the latter shall be given an opportunity for presenting a written opinion within a period to be specified (by the Examiner).

ART. 73. When the Examiner finds no reason for refusing the application, he shall give a decision that the application shall be published.

When a decision has been given under the provisions of the preceding paragraph, the Patent Office shall publish the application by inserting in the *Patent Gazette* the date of the application, the full name of the inventor, the full name or denomination and domicile of the applicant, and the gist of the application.

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At the same time as the publication of the application, the Patent Office shall submit to public inspection the documents of application and the matters necessary thereto at the Patent Office and also at other places to be specified by ordinance.

ART. 74. In case an application has been published, any person may within two (2) months from the day of the publication of the application state an objection to a patent to the Patent Office.

An objection to a patent shall be made by presenting a statement of objection to the patent with its reasons given therein.

Any person interested may intervene in an objection to a patent up to the time when such objection to a patent should have been decided upon.

To intervention in objections to a patent the provisions relating to intervention in trials apply *mutatis mutandis*.

ART. 75. When an objection to a patent has been made, the Examiner shall forward a duplicate of the statement of objection to the patent to the applicant, and give him an opportunity to present a reply thereto within a period to be specified (by the Examiner).

The Examiner shall, subsequent to the lapse of the period allowed by paragraph 1 of the foregoing article for making an objection to the patent and the period specified in the foregoing paragraph, give a decision upon the objection and decide at the same time whether a patent shall, or shall not, be given in respect of the application.

The decision upon an objection shall be accompanied by reasons.

No complaint may be made against a decision upon an objection to a patent.

If it should be found necessary as a result of an objection made to a patent, the Examiner may order the specification or drawings of the patented invention to be amended.

ART. 76. As regards the costs of taking evidence incurred in connection with an objection to a patent, the provisions for costs relating to trials shall apply *mutatis mutandis.*

ART. 77. The Examiner shall decide, in case there is no opposition to a patent.

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ART. 80. The provisions of Art. 100 and Art. 118, paragraph 1, shall apply *mutatis mutandis* to examination.

ART. 81. A decision (of an Examiner) shall be accompanied by reasons.

ART. 82. In addition to the provisions of this law, provisions relating to documents concerning an examination which are to be served and to service (of documents) shall be determined by ordinance.

ART. 83. If it be necessary to do so in a civil or criminal action, the proceedings may be suspended by the Court until a decision that a patent shall be given or refused shall have become finally binding.

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ART. 86. A demand for a trial shall be presented in writing.

Such demand shall state a definite application and reasons.

ART. 87. If a demand for a trial is clearly impermissible or contrary to the formalities required by laws and ordinances, or if it has been made after the lapse of due time, the presiding judge shall immediately dismiss it by a ruling.

In a ruling under the foregoing paragraph, reasons shall be given.

Any person dissatisfied with a ruling under paragraph 1 may make immediate complaint.

To immediate complaint, the provisions of the Code of Civil Procedure relating to immediate complaint shall apply *mutatis mutandis.*

ART. 88. When a demand for a trial has been accepted, the presiding judge shall serve a duplicate copy thereof upon the defendant and give the latter an opportunity for presenting a written reply within a period to be specified (by the presiding judge). When such a reply has been received, a duplicate copy thereof shall be served upon the other party.

In a trial, either party may be directed to present a reply to a document presented by the other party, or questions may be put to the parties in writing, requiring them to present a written opinion thereon.

ART. 89. A trial is conducted by three patent judges consulting together.

The consultation is decided by a majority vote.

The senior among the judges shall be the presiding judge.

The presiding judge manages affairs relating to the case under trial.

ART. 90. Judges are nominated by the Director of the Patent Office for each case to be tried.

If any judge is prevented from participating in a trial, his nomination shall be cancelled and another judge nominated in his place.

ART. 91. A judge is excluded from participation in a trial:

1) If he himself is a party, an intervener, or a party objecting to patent in the case under trial;

2) If he is a relative to any person named in the preceding number or to his or her spouse;

3) If he is the legal representative, supervisor of guardianship or curator of any persons named in No. 1;

4) If he has acted as representative to any person named in No. 1 in the matter;

5) If he has acted as witness or expert witness in the matter;

6) If he has, either as Examiner or Judge, participated in a decision or patent judgment in the matter;

7) If he is directly interested in the matter.

ART. 92. If a judge is excluded from participation in a trial in accordance with the provisions of the foregoing paragraph, or if it is apprehended that he may make a biased trial, he may be refused by any party or intervener.

ART. 93. A motion of refusal of a judge on the ground that he is to be excluded from participation in the trial under the provisions of Art. 91 may be made at any stage of the trial.

No motion of refusal of a judge on the ground that it is apprhended that he may make a biased trial can be made by any party or intervener after he has made an application or made a statement against an application by the other party without claiming a cause of refusal which has come to his knowledge.

ART. 94. A motion of refusal may be made either in writing or orally.

Prima facie evidence shall be given of a cause of refusal. The statement made in discharge of his official functions by the

judge against whom a motion of refusal has been made may be used as such *prima facie* evidence.

As regards a motion of refusal of a judge, on the ground that it is apprehended that he may make a biased trial, made by a party or intervener after he has made an application or statement, *prima facie* evidence shall be given of how the cause of refusal has come into existence or knowledge thereof has been obtained subsequent to such application or statement.

ART. 95. When a motion of refusal has been made, whether it is, or is not, to be permitted is decided by a trial by a judge other than the judge against whom the motion of refusal has been made, and who has been nominated by the Director of the Patent Office.

In a ruling under the provisions of the foregoing paragraphs reasons shall be given.

No dissatisfaction can be stated against a ruling under the provisions of paragraph 1.

ART. 96. No judge against whom a motion of refusal has been made may do any act in the case under trial until it has been decided whether such motion shall be permitted; but this does not apply to acts which admit of no delay in the case of a motion of refusal on the ground that it is apprehended that a biased trial may be made.

ART. 97. Trial for invalidity under Art. 84, paragraph 1, No. 1, is conducted orally, but the presiding judge may, either on application or *ex officio*, conduct it in writing.

Oral trials are held in public, but this does not apply if there is apprehension of such course being prejudicial to public interests or morals.

ART. 98. Any person interested may intervene in a trial until such trial is brought to a conclusion.

ART. 99. An application re intravention shall be made by presenting a written application re intervention.

When a written application has been accepted, the presiding judge shall serve the same on the parties and interveners and give them an opportunity for raising an objection thereto within a period to be specified (by the presiding judge).

When an application re intervention has been made, whether it is to be permitted or refused shall be decided by trial.

The provisions of paragraphs 2 and 3 of Art. 95 apply *mutatis mutandis* to rulings under the provisions of the foregoing paragraph.

ART. 100. In a trial evidence may be examined either on the application or *ex officio*.

Examination of evidence under the foregoing paragraph

may be entrusted to the Local Court of the place where the necessary work is to be done, or any other public office exercising the functions of a Local Court.

The provisions of the Code of Civil Procedure relating to examination apply *mutatis mutandis* to the examination of evidence under the provisions of the two foregoing paragraphs, but as regards the examination of evidence at the Patent Office no fine can be imposed, nor may any production (arrest) of persons be ordered.

ART. 101. Even though parties or interveners do not take proceedings within a legal or appointed period or do not appear at a hearing, the presiding judge may go on with the trial.

ART. 102. A demand for a trial may be withdrawn before the examination has been brought to a termination, but after a written reply has been presented the consent of the other party is required.

ART. 103. In a trial, examination may be made even into reasons not stated or those withdrawn by a party or an intervener. In such case the party or intervener shall be given an opportunity of stating an opinion on such reasons within a period to be specified (by the presiding judge).

ART. 104. The trial judge may combine the examination or judgments in the case of two or more trials respecting which both or either of the parties are the same.

In case examinations have been combined under the provisions of the foregoing paragraph, the trial judge may again make separate examinations or give separate judgments.

ART. 105. Unless otherwise provided, a trial comes to an end by judgment.

In a judgment under the foregoing paragraph reasons shall be given.

When the case is mature for giving judgment, the presiding judge shall notify the parties and interveners of the conclusion of the examination.

If necessary, the presiding judge may, either on application or *ex officio*, reopen examination even after the conclusion of the examination has been notified under the provisions of the foregoing paragraph.

A judgment shall be given within twenty (20) days from the day on which notice of the conclusion of the examination has been issued.

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ART. 107. The provisions of Art. 82 apply *mutatis mutandis* to trials.

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ART. 109. Any person who is dissatisfied with a decision (in an examination) or a patent judgment (judgment in a trial) given against him may demand an appeal trial within thirty (30) days on which the decision or judgment has been passed; but this does not apply to the judgment re the amount of compensation under the provisions of Art. 106.

ART. 110. The provisions of Arts. 86-108 apply *mutatis mutandis* to appeal trials, but the judges consulting together shall be either three (3) or five (5) in number, and the words "party or intervener" in Art. 92-94 and Art. 101 shall be replaced by the words "party, intervener or party objecting to the patent."

ART. 111. In an appeal trial, the grounds for the demand for a trial may be changed, or new facts or means of proof produced.

ART. 112. In an appeal trial, judgment shall be delivered in the matter in question.

ART. 113. The provisions of Art. 72 apply *mutatis mutandis* where, in an appeal trial against a decision of refusal, any reason of refusal differing from those on which the said decision is founded has been discovered.

The provisions of Arts. 73-79 apply *mutatis mutandis* when the demand for an appeal trial against a decision of refusal is found reasonable; but if the application respecting which a patent is to be granted has already been published, judgment shall be given without publishing the application again.

ART. 114. In an appeal trial against a decision of refusal the decision may, the provisions of the two foregoing articles notwithstanding, be quashed and judgment given to the effect that the matter shall be again subjected to examination.

In case judgment has been given under the provisions of the foregoing paragraph, the reasons on which such quashing in based bind examiners so far as the particular matter is concerned.

ART. 115. If any person against whom a judgment in an appeal trial has been rendered is dissatisfied with such judgment, he may, within thirty (30) days from the day on which the judgment has been served on him, bring an action before the Supreme Court, but this only on the ground that the judgment is in contravention of a law or ordinance.

To the actions and judgments under the provisions of the foregoing paragraph, the provisions relating to the second appeals in civil actions and judgments thereon apply *mutatis mutandis*.

The reasons on the basis of which a patent judgment has

been quashed by a judgment of the Supreme Court bind the Patent Office so far as the particular matter is concerned.

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ART. 117. If a finally binding patent judgment or a court judgment relating to the effect of a patent or a permission under Art. 53 or the scope of a patent right has been registered, no person whosoever may demand an identical trial on the basis of identical facts and identical evidence.

ART. 118. If it be necessary to do so in a trial or an appeal trial the proceedings may be suspended until the completion of the proceedings in any civil or criminal action.

If it be necessary to do so in a civil or criminal action, the Court may suspend the proceedings until a patent judgment has become finally binding or a court judgment rendered in respect to a patent.

ART. 119. Unless otherwise provided, the incidence of the costs of a trial, an appeal trial or an action shall be determined by the judgment in the main case.

The amount of the costs of a trial, an appeal trial or an action shall, on demand, be determined by the Director of the Patent Office.

As regards the incidence and amount of costs, these shall be provided by Imperial Ordinance.

ART. 120. A ruling relating to the amount of the costs of a trial, an appeal trial or an action, or a finally binding ruling and patent judgment relating to the amount of compensation under this Law are, in regard to compulsory execution, considered as a "title of obligation" under the provisions of Art. 559, No. 1, of the Code of Civil Procedure, but an executory exemplification thereof shall be granted by an official of the Patent Office.

ART. 121. Any matter which has been terminated by a finally binding patent or a court judgment rendered in the following trial, appeal trial or action may be re-tried on demand for cancellation or on demand for revivor:

1) Trial relating to the validity of a patent or a permission under Art. 53, the scope of a patent right or the acquisition of a right of working;

2) Appeal trial against a judgment in a trial under the preceding number;

3) Action against a judgment in an appeal trial under the preceding number.

The provisions of Art. 468 of the Code of Civil Procedure apply *mutatis mutandis* to the demand for cancellation, and

those of Arts. 469 and 470 of the same Code to the demand for revivor.

ART. 122. Re-trial may only be demanded within thirty (30) days from the day on which the party obtained knowledge of the ground of dissatisfaction.

If the party has obtained knowledge of the ground of dissatisfaction before the patent judgment becomes finally binding or before the Court judgment is rendered, the period specified in the foregoing paragraph is calculated from the day next following the day on which the patent judgment has become finally binding or the Court judgment has been rendered.

In case a re-trial is demanded on the ground that in the proceedings in a trial, an appeal trial or an action, the party was not represented in accordance with the provisions of law, the period mentioned in paragraph 1 is calculated from the day next following the day on which the party or his legal representative has, by service, learned the fact of the patent judgment or the court judgment (as the case may be) having been rendered.

No re-trial may be demanded when three years have elapsed from the day on which the patent judgment has been rendered.

ART. 123. As regards a demand for re-trial and subsequent proceedings in a trial, an appeal trial and an action, the provisions relating to the procedure for the particular instance (class of trial) apply *mutatis mutandis*, unless there be special provisions to the contrary in this chapter.

ART. 124. The provisions of Art. 467, paragraph 2, Art. 471, Art. 472, paragraphs 1 and 2, and Arts. 475-482, of the Code of Civil Procedure apply *mutatis mutandis* to re-trial made in a trial, an appeal trial or an action.

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ART. 128. To a statement of dissatisfaction with a patent judgment or court judgment by a third person on the ground that such judgment has been caused to be rendered by the collusion of the claimant and defendant with intent to fraudulently prejudice the rights or interests of such third person, the provisions relating to re-trial on the demand for revivor apply *mutatis mutandis*.

In the case mentioned in the foregoing paragraph, the claimant and defendant are treated as joint defendants.

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JUGOSLAVIA

(Kingdom of the Serbs, Croats and Slovenes)

LAW OF NOVEMBER 15, 1920*

CHAPTER I

General Provisions

Section 1. Under the name of "Bureau of Industrial Property" there is created an official and independent central organism, the location of which shall be at Belgrade. The competence of this Bureau shall be extensive to the whole of the Kingdom of the Serbs, Croats and Slovenes. The Bureau shall be subject to the Minister of Commerce and Industry.

The Minister of Commerce and Industry shall have the authority to transfer the location of the Bureau elsewhere.

Sec. 2. The Bureau shall transact all matters that are attributed thereto by the present ordinance and which have relation to the protection of industrial property.

Sec. 3. The Bureau shall be directed by a President who shall be responsible for all matters of administration.

The President shall be an official appointed through Royal Decree and he shall possess the rank of Chief of Section.

Sec. 4. The Bureau of Industrial Property shall comprise:

1) . . . . . .
2) An Application Section for designs, models, and trade marks;
3) An Appellate Section;
4) An Opposition Section; and
5) A Cassation Section (Sec. 72).

Until further order, the officials of the Bureau, named through Royal Decree, shall be the following:

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In the Application Section for . . . trade marks, a Chief, versed in the law, with the rank of Inspector; two Referees (Examiners), lawyers with the rank of Secretary; eight Technicians (one with the rank of Inspector and seven with that of Secretary); two Registrars, and two clerks for the drawing up of the *procès-verbal.*

The officials of the two Application Sections, named through Royal Decree, shall also sit in the Appellate Section and in the Opposition Section.

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*Matter not relating to trade marks has been omitted.

The Bureau shall, in addition, have one File Clerk, one Librarian with the rank of Secretary, four Clerks (two jurists, two technicians), as well as the necessary number of clerks and assistants.

The number of officials named through Royal Decree may be increased in case of need. The officials and the provisional personnel shall be considered, as regards rank and salary, similar to the personnel of the same category in the Ministry of Commerce and Industry.

It is the President of the Bureau that will appoint and dismiss the provisional personnel.

The officials shall be subject to the disciplinary authority of the President of the Bureau and the Minister of Commerce and Industry; as to the personnel that is not named by Royal Decree, it is the President of the Bureau that shall exercise disciplinary authority.

SEC. 5. The Bureau shall keep its own accounts, in which it shall enter the fees paid in, and carry on the statistical labors of the Bureau.

SEC. 6. The Bureau shall maintain its own budget. The President shall sign the orders for payment in second instance.

All Financial Administrations of the State and the Treasury Offices of the State shall be bound to accept from those interested sums of money for the printing and other expenses resulting from orders given by the Bureau to the said persons. The Financial Administrations and the Treasury Offices are bound to open an account in the name of the Bureau and to notify, the same day, the Bureau and the main Treasury of the State at Belgrade regarding payments effected.

It is the President of the Bureau that shall dispose—through the intermediary of the Treasury of the State—of the sums collected.

SEC. 7. The protection of industrial property shall comprise that of . . . trade marks.

CHAPTER II

THE SUBJECT MATTER OF THE RIGHT TO INDUSTRIAL PROPERTY

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MARKS OF MANUFACTURE AND OF COMMERCE

Definition

SEC. 49. There shall be considered as marks of manufacture and of commerce the particular signs that, under different forms, serve to distinguish, in trade, industrial or agricultural products from other products of the same nature.

These signs may be employed under the form of marks, seals, vignettes, reliefs, ciphers, inscriptions, special illustrations, etc.

To the end of ascertaining whether a sign is susceptible of constituting a mark, account shall be taken of all the circumstances of fact and, in particular, of the duration of use that has already been made of this sign.

Insignia Excluded as Marks

SEC. 50. There shall be excluded from protection marks that serve for designating articles of monopoly, save the case in which it is the Administration of the monopoly of the State that asks, itself, for the protection of the mark.

SEC. 51. There shall be excluded from registration and, in consequence, from protection, marks and words:

1) That represent the person of the King or of other member of the Royal House;

2) That represent the arms of States or other public arms;

3) That relate, in an exclusive manner, to the place, the time, or to the mode of manufacture of the merchandise, to the kind, the quality, or to the purpose of this latter, or to its price, its quantity, or its weight;

4) That are of general use in commerce for designating certain classes of goods; and

5) That have an immoral character or one contrary to public order, or contain inscriptions or indications not corresponding with the truth, and of a nature to deceive the consuming public.

SEC. 52. Marks that contain the arms of the King or of a member of the Royal House, or those of the State, or any other public arms, or a distinction of honor, may not be registered unless the applicant presents the instrument that authorizes him to make use of these insignia in conformity with the laws and provisions in force.

Protection of Word Marks

SEC. 53. The exclusive right to make use of a mark that consists of one or more words shall extend not only to the use of the mark in the form under which it has been deposited, but even to that which may be made thereof in other forms reproducing the mark protected, in whole or in part, in different colors, dimensions, or characters.

SEC. 54. The registration of a mark that consists exclusively of letters or of words shall not prevent another person from offering for sale or distributing in trade merchandise bearing these signs, if these letters and words represent the name,

the firm, or the designation of the enterprise of this other person.

This other person, whose name, firm, or designation of establishment, is identical with the mark previously protected in favor of a third person, may contest and have taken away from the holder of record of this mark the right to make use thereof for the same kinds of goods, save when the holder of record of the mark bears the same name, has the same firm, or when his enterprise bears the same designation.

Obligatory Use of the Mark

SEC. 55. The use of registered marks is not obligatory; however, the Minister of Commerce and Industry may order that certain goods be provided with a registered mark before being distributed in trade.

Limitation of Use of Marks to Certain Classes of Goods

SEC. 56. The right to a mark shall not prevent another merchant from making use of the same mark for designating other classes of goods.

In case of doubt as to the similarity of goods, it is the Bureau of Industrial Property that shall decide, after having heard, in case of necessity, the opinion of the Chamber of Commerce and Industry.

SEC. 57. The same person may have several marks registered for the same kind of goods.

SEC. 58. The effects of the mark intended for the designation of the product shall likewise extend to the envelopes, wrappers, containers, cases, and other modes of holding, of the merchandise.

SEC. 59. The present law implies no change in the provisions at present in force in whatever concerns the special marks prescribed for certain products, and, in particular, those relative to the stamping of precious metals.

Duration of Protection

SEC. 60. The right to the mark shall not be limited to a certain term. It shall endure as long as the prescribed taxes are paid regularly and in due time.

The right to a mark shall become effective counting from its inscription in the Register.

Transfer of Trade Mark Rights

SEC. 61. The right to a mark is connected with the enterprise.

It shall be extinguished together with the enterprise, and may be transferred only with the enterprise.

In this latter case, the new owner shall be bound to have

the registration of the mark transcribed in his name, unless he continues the exploitation of the enterprise without change and under the same business designation.

For so long as the transcription of the registration shall not have taken place, the new owner may not avail himself of his right to the mark, and all official communications with reference to the mark shall be addressed to the holder of record or to the attorney that he has appointed.

Extinction of Protection

SEC. 62. The protection of the mark shall expire:

1) When the holder of record shall renounce his right to the mark. If the renunciation concerns only a determined class of goods, the mark shall remain valid for the other classes;

2) When the annual tax or the additional tax has not been paid in due time;

3) In case of suit, when the decision of the Bureau of Industrial Property—proclaiming the extinction of the mark—has become definitive.

The protection of a mark shall be extinguished: In the case of No. 1, the day following the day on which the declaration of renunciation has been received; in the case of No. 2, the day that follows the expiration of the last year for which the tax has been paid; in the case of No. 3, the day on which the decision of the Bureau of Industrial Property has become definitive.

SEC. 63. The holder of record of a mark that is extinguished, in conformity with Sec. 62, may reapply for the protection thereof for the same class or for another class of goods. Third parties may not deposit the same mark, or a similar mark, for the same class of goods, until after the expiration of the two years that follow the extinction of the mark, if, during this term, the old holder of record has not obtained protection anew.

There shall be considered as similar any signs that—in trade—may easily be confused with the mark protected.

Avoidance

SEC. 64. The right to a mark shall be avoided:

1) When the sign that constitutes it cannot be considered as a mark in the sense of Sec. 49;

2) When the mark is excluded from protection in accordance with the tenor of Secs. 50, 51, 52, and 54;

3) When the mark so resembles another mark previously registered for the same class of goods and legally valid, that the ordinary purchaser cannot detect the difference save by paying attention particularly thereto;

4) When the mark contains, without the party interested

having given his consent, the name or portrait of a third party.

In the case of Nos. 1, 2, and 4, the avoidance of the mark may be petitioned by any interested person; in the case of No. 3, only by the holder of record of the mark previously registered.

The holder of an already extinguished mark, or he that has legally acquired the protection, may petition the avoidance of another mark, identical with or similar to the extinct mark, with reference to which the delay of two years, provided for in Sec. 63, is not yet expired.

The avoidance of the right to a mark shall have a retroactive effect, in this sense: that the right shall be considered as having never existed.

Dispossession

SEC. 65. The holder of record of a mark shall be dispossessed when a third party proves that he has employed the same mark for the same goods, but without having it registered, and that, in the trade circles interested, this mark was already considered as the distinctive sign of the products of the establishment of this third party at the moment at which the opposed mark was registered.

The petition for dispossession shall be rejected if the defender proves that he has had the mark registered with the consent of the petitioner, or that the enterprise in favor of which the mark was registered has employed this mark—prior to registration—for as long a time as, or even longer than, the petitioner.

The petition for dispossession of such a mark must be lodged, at latest, within two years counting from the registration.

The dispossession shall have a retroactive effect and the right of the holder of record of the mark shall be considered as having never existed.

When the decision that pronounces the dispossession of the registered holder of the mark has become definitive, the petitioner is authorized to make application for the registration of the mark in his own name.

CHAPTER III

ORGANIZATION OF THE BUREAU OF INDUSTRIAL PROPERTY

Competence of Bureau

SEC. 66. The Bureau of Industrial Property shall have competence for . . . all inscriptions . . . in the Trade Mark Register, and for deciding as to the revocation of . . . trade marks.

The Bureau of Industrial Property shall be obliged to furnish, on demand of the Courts, opinions in writing on questions concerning . . . trade marks.

SEC. 67. The Bureau of Industrial Property shall consist of permanent and temporary members, the number of which shall be fixed, according to needs, by the Minister of Commerce and Industry.

The President of the Bureau of Industrial Property shall be, by virtue of his official position, a permanent member. The permanent members shall be chosen from among those persons that figure in the category of officials named by Royal Decree; the temporary members shall be chosen from among public officials in general, or from among capable persons of other professions.

The President of the Bureau of Industrial Property and the Chiefs of the Appellate Section and the Opposition Section must possess a legal education.

The permanent members and the temporary members are to be named on proposal of the Minister of Commerce and Industry, subject to the following conditions:

Temporary members, for a term of five years; permanent members, for an indeterminate period.

When a permanent member shall cease to be an official of the Bureau of Industrial Property, he shall cease at the same time to be a permanent official.

Furthermore, any official named temporary member, or permanent, shall hold his position and his rank in the service of the State.

Temporary members shall not receive a fixed salary; special remuneration shall be fixed for them.

The Bureau of Industrial Property shall be autonomous and independent in its decisions, and shall be bound only by the laws and the present ordinance.

The President of the Bureau of Industrial Property, the same as all the permanent members and temporary members—before entering upon their duties—shall take the oath imposed upon judges.

Sections

SEC. 68. . . . . .

The Application Section for . . . trade marks shall control in an independent mode applications for protection concerning . . . trade marks; it shall order the inscription thereof in the Register and shall decide all non-contentious petitions that concern . . . trade marks already registered, such as assignments,

declarations of litigation, facultative licenses, expirations of . . . trade marks.

At the head of each Section there shall be found a Chief whom the Minister of Commerce and Industry shall designate from among the permanent members, on nomination of the President of the Bureau of Industrial Property.

To the end of rendering their decisions, the Sections shall consist of three members . . . ; in the Application Section for . . . trade marks . . . they shall be chosen from among the permanent personnel and, in case of need, from the temporary personnel.

. . . . . .

In the Application Section for . . . trade marks, there must always be two permanent jurists; the third member may be a jurist, or a temporary or permanent technician, and he shall be designated by the Chief of Section.

At the beginning of each year the President of the Bureau of Industrial Property shall designate the permanent members of the Application Section for . . . trade marks; it shall be the Chiefs of the Application Sections that will proceed to the composition of the necessary divisions in the Application Sections.

Section of Appeals and Section of Opposition

SEC. 69. The decisions of the Application Divisions may be carried by those interested before the Appellate Section. The appeal must be lodged in the Bureau of Industrial Property within the thirty days that follow the notification of the decision.

The Appellate Section shall consist of five permanent or temporary members of the Bureau, to-wit:

1) . . . . . .

2) When it is a question of deciding regarding a . . . trade mark, three jurists and two technicians.

The decisions of this Section shall be definitive.

Decisions . . . relative to the avoidance . . . of trade marks and the dispossession of the holders of record of these objects shall be rendered by the Opposition Section; this Section shall consist of five permanent or temporary members of the Bureau of Industrial Property, to-wit:

1) . . . . . .

2) When it is a question of . . . trade marks, three jurists and two technicians.

This Section shall decide likewise in the cases provided for in Sec. 153.

The Appellate Section and the Opposition Section shall be

presided over by the President of the Bureau of Industrial Property or by a person that he shall designate; the other members of the two Sections shall be designated, in conformity with the provisions of the present ordinance, by the President, and he shall choose them from among the permanent or temporary members of the Bureau that have not participated in the decision rendered, in the same case, by the Application Section or by the Appellate Section.

SEC. 70. For the preparation of opinions demanded by the Courts, in virtue of Sec. 66, paragraph 2, the President of the Bureau of Industrial Property shall each time designate a division consisting of at least five members, of whom two at least shall be jurists.

Procedure in the Sections

SEC. 71. In all the Sections, the preliminary actions preparatory to the decision shall be rendered by the referee independently, or in connection with other technician members whose opinion he should know on certain questions.

The actions of the referee may not be made the subject matter of a special appeal, but the parties may petition the Chief of the Section to modify the preliminary actions of the referee. If this petition is without avail, the parties may then demand a hearing, to the end that the matter be settled pre-judicially.

In all the Sections decisions shall be rendered by absolute majority.

Before pronouncing decision, each Section may demand the opinion of experts chosen from among the members of the Bureau of Industrial Property, or elsewhere.

All decisions and all actions of the Sections shall be rendered in the name of the Bureau of Industrial Property and with reasons given; a copy shall be forwarded to each one of the parties interested. In each decision (or action), there shall be indicated the Section that rendered same and the members that have participated therein.

Cassation Section of the Bureau of Industrial Property

SEC. 72. Within thirty days following the notification, the decision of the Opposition Section may be made the subject matter of an appeal to the Cassation Section of the Bureau of Industrial Property. The appeal must be lodged with the Bureau of Industrial Property.

This Section shall consist of five members, to-wit: three members of the Supreme Tribunals, the eldest of whom shall preside, and two technician members.

The first three members and their substitutes shall be named by the King for a period of five years, and on the proposal of the Minister of Commerce and Industry.

The two other technician members shall be designated by the Chief of the Section from among the temporary members of the Bureau of Industrial Property (Sec. 67); the President shall have care that none of these members shall have taken part in the same case, as to decision or as to opposition, before the Bureau of Industrial Property.

The members of this Section shall receive special remuneration, to-wit: the first three, fixed salaries; the technician members, on the contrary, an attendance fee for each hearing.

Grounds for Exemption

SEC. 73. For the exemption of members of the Cassation Section and members of the Application Section, the Appellate Section, and the Opposition Section, of the Bureau of Industrial Property, there shall be applicable the provisions of Secs. 52, 53, 54, 55, and 56, of the Code of Civil Procedure of the Kingdom of Serbia.

Vacations

SEC. 74. The services of the Bureau of Industrial Property shall be suspended on Sundays and other holidays, during which the service of the tribunals located at the Bureau shall be suspended. The principal vacations of the Bureau shall coincide, as regards time, with the judicial vacations.

When the last day of a term falls on a Sunday or on any other holiday, the first work day that follows the Sunday or holiday shall be considered as the final day of the term. The principal vacations of the Bureau of Industrial Property shall not cause interruption as regards terms. When the last day of a term falls on a day of the long vacation, the first work day that follows the long vacation shall be considered as the last day of the term.

During the long vacation, the activity of the Bureau of Industrial Property shall consist solely in receiving and entering applications, effecting registrations in the Registers, and in deciding on applications as far as is possible.

Attorneys

SEC. 75. All persons not domiciled in the country that claim a right of industrial property, or are owners of record of a right of this nature, or are interested in litigation resulting from one of these rights, must appoint an attorney domiciled in the country.

The contents of the power of attorney that must be pre-

sented at the Bureau of Industrial Property shall be prescribed by the Minister of Commerce and Industry.

Notifications that shall be made to the attorney shall be of the same legal effect as if they were made to the principal himself.

SEC. 76. Only attorneys-at-law, patent agents, and consulting engineers, subjects of the Kingdom, may exercise the profession of attorneys in matters of industrial property.

The interests of the State shall be represented by State's attorneys.

In addition to their attorneys, and, if the Section that is concerned with the case so permits, the parties may be represented by other persons of experience who will explain the rights of the parties; but the expenses that will result therefrom will be upon them and the petitioning party shall not have the right to claim therefor indemnification from the opposing party.

Patent agents and consulting engineers will be admitted by the Bureau of Industrial Property which will deliver diplomas to them.

None of these may enter upon the performance of his functions until after having been registered in a special Register kept by the Bureau of Industrial Property. These registrations shall be published in the official sheet of the Bureau of Industrial Property.

The registration in this Register and the delivery of the diploma shall be subject to a fee of 250 dinars.

In cases concerning the revocation or the avoidance of . . . trade marks, or the dispossession of the holders of record of rights on these objects, the functions of attorneys may be exercised by attorneys-at-law only; patent agents and consulting engineers may be attorneys in these cases only in whatever concerns technical questions.

There may be admitted as patent agents nationals that possess the free disposal of their property, that have their domicile in the country and have not been convicted, or that are not under inquiry, for a crime, a dishonorable offense, or a contravention committed for the end of gain.

In addition, these persons must possess the necessary technical capacity. They shall be considered as possessing this capacity if, in the country or abroad, they have followed the course of a technological faculty, or of a technological university, or of an advanced school of agriculture having the rank of a university, or of an academy of mines or of forests, or of the division of natural history or of mathematics of a faculty of

philosophy, and have passed all the prescribed examinations.

It is the Minister of Commerce and Industry that decides, on the proposal of the Bureau of Industrial Property, and, after having heard the competent Minister, whether the higher school of the foreign country has the rank of university and whether it gives sufficient technical instruction for the exercise of the profession.

To the end that a person that possesses the necessary qualification may be admitted as patent agent, it is necessary that he pass an apprenticeship of two years with a patent agent of the country, or with a lawyer that is occupied with representation before the Bureau of Industrial Property, and shall undergo the examination of patent agent. The examination shall take place at the Bureau of Industrial Property. The term spent at the Bureau by permanent members shall be counted as apprenticeship with a patent agent for members that possess the necessary qualification.

Patent agents shall be placed under the surveillance of the Bureau of Industrial Property.

It is the President of the Bureau of Industrial Property that shall decide regarding the registration in the Register of patent agents or consulting engineers. The refusal to order the registration in the Register may be carried to the Minister of Commerce and Industry, by way of appeal, within the thirty days that follow the notification of refusal; the decision of the Minister will be definitive.

Private engineers and architects that are authorized to publicly exercise their profession may become consulting engineers. Before their registration in the Register, patent agents and consulting engineers must be sworn.

SEC. 77. In whatever concerns disciplinary penalties as regards patent agents and candidates for this profession, there shall be applied the provisions of Secs. 53 to 63 of the Law of June 15, 1865, relative to Judicial Attorneys in the Kingdom of Serbia, with the modification that, in order to inflict the penalty, the President of the Bureau of Industrial Property, the Cassation Section of the said Bureau, and the Minister of Commerce and Industry, shall replace the President of the Tribunal of First Instance, the Minister of Justice, and the Disciplinary Tribunal.

For infractions of slight importance, the President of the Bureau of Industrial Property may inflict upon a patent agent a censure or a fine for as much as 150 dinars. Within the term of fifteen days, the patent agent may have recourse against this penalty before the Cassation Section of the Bureau of Indus-

trial Property; the decision of this Section will be definitive.

If it is a matter of graver infractions, the President of the Bureau of Industrial Property shall transmit the records to the Cassation Section, which shall inflict upon the patent agent a censure or a fine for as much as 1100 dinars, or shall prohibit him from the exercise of his profession for the term of from one month to one year, or decide that he no longer merits the confidence of the public and must be removed from the Register of Patent Agents. Within fifteen days, the patent agent may have recourse against this decision to the Minister of Commerce and Industry; the decision of this latter will be definitive.

In addition, by decision of the President of the Bureau of Industrial Property, the patent agent may be relieved of his functions, in the cases and within the limits foreseen in Sec. 63 of the Law concerning Judicial Attorneys in the Kingdom of Serbia.

All complaints lodged by virtue of the present section shall be addressed to the Bureau of Industrial Property.

Nomination of an Attorney

SEC. 78. When the holder of . . . a trade mark is domiciled abroad, or when he has no representative in the country, or when his domicile in the country is unknown, the Bureau of Industrial Property may designate for him a curator. The designation of this curator must be published in the *Official Journal* of the Bureau of Industrial Property. This curator shall retain his functions until the moment that the holder of record himself shall have designated an attorney.

Official Journal of the Bureau of Industrial Property

SEC. 79. Under the title of *Glasnik Uprave za Zastitu Industrijske Svojine* (Bulletin of the Bureau of Industrial Property), the Bureau shall publish an official periodical which shall appear regularly, and in which shall be published the notices and communications foreseen by the present ordinance in whatever concerns . . . trade marks.

. . . . . .

Trade Mark Register

SEC. 82. There shall be kept at the Bureau of Industrial Property a Trade Mark Register which must contain the following indications: the serial number; the date of registration; the original mark; the date of deposit; the priority; the names and surnames; the firm and domicile of the owner of the mark, and, eventually, of his attorney; the designation of the enterprise that employs the mark; the goods and classes of goods to which the mark is applied; details regarding the payment of

annuities; the transfer and the extinction of the right to the mark; the Register shall contain one column for "observations," in which shall be entered any other indications having importance as regards the mark.

SEC. 83. The Bureau of Industrial Property shall keep in special archives the descriptions, designs, models and samples in the matter of . . . existing trade marks, as well as the applications and documents serving as a basis for the registrations made in the Register.

. . . Any person may consult the Register, designs, descriptions, etc., and make copies thereof.

After registration in the Register, the Bureau shall publish in the *Official Journal* the designs and models and marks, as well as the modifications that relate to these objects.

The Bureau of Industrial Property shall deliver, on application, certified extracts of registrations in the Register.

Legal Aids

SEC. 84. The Tribunals and all other authorities shall be bound to lend their assistance to the Bureau of Industrial Property.

CHAPTER IV

DELIVERY OF CERTIFICATE

. . . . . .

Procedure for Registration of Trade Marks

SEC. 110. Whoever shall wish to assure to himself the exclusive right to the use of a mark must deposit it, in writing and under the formalities prescribed, directly or by mail, with the Bureau of Industrial Property.

Contents of the Application

SEC. 111. The application must contain:

1) Name and surname (firm), calling and domicile of the applicant, and, eventually, of his attorney;

2) Designation of the enterprise and of the class of goods for which the protection of the mark is petitioned;

3) Indication of the duration for which protection is petitioned;

4) Declaration of the applicant that he will pay all the expenses of printing for the publication of the application.

Annexes to the Demand

SEC. 112. There must be annexed to the application:

1) The power of attorney, when protection is applied for through an attorney;

2) The mark, in the form in which it is to be employed, in

four identical copies;

3) A *cliché* (electrotype) of the mark, with two impressions of this *cliché;*

4) If the mark is intended for products of metal, stone, glass, etc., there shall be annexed to the application two specimens with the mark stamped or engraved.

Upon the application there shall be affixed stamps the amount of which shall represent the deposit fee and the tax for the first year (Sec. 156).

Right of Priority

Sec. 113. When the application is accepted and protection is granted, the right of priority of the mark protected is acquired counting from the deposit, if this was absolutely regular at the time that it was effected.

If the application is defective and the defects are corrected in good time, without modifying the essentials of the mark, the priority shall count from the moment at which the first deposit was made. However, if the correction of faults entails a modification of the essentials of the mark, the priority shall be counted from the time at which these corrections shall have been introduced therein.

Examination of Application

Sec. 114. If the deposit is in compliance with the requirements of Secs. 49, 50, 51, 52, 110, 111, and 112, and if the expenses for printing of the publication have been paid, the Application Section shall accept the mark, register it in the Register, and publish it at the expense of the applicant in the *Official Journal* by utilizing the *cliché* (Sec. 112, No. 3).

In addition, the Bureau of Industrial Property shall deliver to the applicant a certificate attesting that the mark is protected and indicating the date of the registration and the essential contents of same; there shall be attached thereto a print of the mark and eventually a specimen (Sec. 112, No. 4).

Sec. 115. If the Bureau of Industrial Property finds that the protection of the mark cannot be granted, it shall proceed on all points in conformity with the prescriptions of Sec. 109.

Identical or Similar Marks

Sec. 116. If the Bureau of Industrial Property shall consider that the mark deposited is identical with or similar to another mark already deposited for the same class of goods, the Application Section shall notify the depositor to this effect and shall permit him to withdraw or modify his application (prior notice); at the same time it shall notify the proprietor of the mark already deposited.

CHAPTER V

Procedure in . . . Trade Mark Matters

I. Patent Oppositions*

Sec. 117. Procedure for revocation, avoidance, dispossession, declaration of relative inefficacy, or dependence of patents, the grant of obligatory licenses, and the expiry of a patent . . . shall be initiated only on petition.

However, if, during any phase whatever of the procedure, the petitioner shall withdraw, the Bureau of Industrial Property may of its own accord continue the procedure already commenced, if it shall deem that there are valid reasons therefor, and shall carry the litigation to a conclusion. If the petitioner is not domiciled in the country, he must, on demand of the adverse party, furnish surety for the costs of the action; the Opposition Section shall fix the character and the amount of this security. The Bureau shall require that this surety be furnished, if the defendant so requires, within the fourteen days that follow the notification of the request; subsequently no request in this sense can be taken into consideration.

The Opposition Section shall fix for the applicant a delay for furnishing surety for the expenses; if the applicant does not comply within the specified term, he shall be considered as having withdrawn his application.

If, during the course of the litigation, it is found that the surety furnished is insufficient, it shall be made sufficient, on petition of the defendant, following the same procedure.

Sec. 118. The Opposition Section may, without special procedure, declare inacceptable actions in opposition of patents that have no legal basis, or memorials that contain no precise demand, or that contain a demand or an objection that the petitioner is not authorized to formulate.

Sec. 119. The petition must contain an explanation of the litigation, as well as the conclusions formulated; it must, in addition, designate the reasons upon which it is based.

The accompanying papers shall be deposited in original or in legalized copies. The petition and the annexes shall be deposited at the Bureau in as many copies as there are parties interested in the case. A single petition may be directed against only a single patent, together with the patents of addition that relate thereto.

Preliminary Procedure

Sec. 120. When the petition is regular, the referee charged with the matter shall forward a copy thereof along with its

*See Sec. 141.

annexes to the defendant party and shall fix for him a delay of thirty days for responding. For weighty reasons, this delay may be extended by the Opposition Section.

The response must be presented in a number of copies sufficient for each of the parties interested in the case to receive one.

SEC. 121. After the filing of the response, or after the expiration of the delay fixed for this purpose, the procedure shall be carried on in conformity with Sec. 95.*

Public Hearing

SEC. 122. When the preliminary procedure is terminated, the Chief of the Opposition Section shall fix the day on which the public hearing shall take place. This fixation shall not be made when the Opposition Section shall have decided, in a non-public hearing, that the petition must be declared not receivable by reason of the lack of authority of the Bureau of Industrial Property. or because there is already *res adjudicata.*

Summons

SEC. 123. There shall be summoned for the public hearing the parties interested, their attorneys, witnesses and experts that are to be heard with respect to the proposal of the referee. If the parties or their attorneys shall not have appeared at the public hearing, this latter shall be adjourned on written demand of one of the parties; however, if the petition in this sense is not formulated, the proceedings shall be returned to the files and the application shall be considered as never having been presented.

Debates

SEC. 124. At the public hearing, the debates shall be oral and public, and they shall be regulated in accordance with the prescriptions of Secs. 149 to 177 of the Code of Civil Procedure of the Kingdom of Serbia.

Outside the cases foreseen in Sec. 150 of the said Code, the Section appealed to, for rendering decision, may, on petition

* "Sec. 95. As soon as the response has been filed or as soon as the delay stipulated to this effect is expired, and after all questions have been clearly elucidated, the matter shall be referred to the Application Section so that it may make decision.

"If, for the clarifying of a point, it is necessary to still raise objections, the referee charged with the case shall demand in writing explanations from the parties, which same he shall forward to the adverse party so that he may respond thereto within the term fixed, until all questions at issue shall be sufficiently clarified on either part. In case of need, the referee may summon the parties in order to hear or have them present proofs; he may hear witnesses, experts, and persons experienced in the line of business, and take all necessary measures to the end that the case may be, as nearly as possible, decided and plainly set forth at the time of being referred to the Application Section."

of a party or a witness, order that the debates shall take place behind closed doors, for all or part, if the public debates might risk endangering a major interest of the State or expose a secret of manufacture of one of the parties or of a witness.

Notwithstanding this debate behind closed doors, the members of the Bureau and of the Cassation Section of the Bureau of Industrial Property may be present.

Proofs

SEC. 125. Secs. 178 to 302 of the Code of Civil Procedure for the Kingdom of Serbia shall be applicable here, insofar as the present ordinance does not contain provisions that are derogatory as regards these articles.

The depositions of witnesses made before the Bureau of Industrial Property under oath shall have the same probatory force as the depositions of witnesses made before the Court.

Costs of the Suit

SEC. 126. In its decision on the main issue, the Opposition Section shall dispose of the costs of the case by adjudging them against the losing party.

The parties shall be referred to the ordinary Civil Courts as regards all claims of private right that may arise.

If the plaintiff withdraws, he must stand the expenses of the defendant.

If, after the request has been notified to him for his response, the defendant shall refuse to acknowledge the withdrawal, the case shall be continued and the question at issue decided. For the period that the request shall not yet have been notified for response thereto, the plaintiff may withdraw it without the consent of the defendant.

Contents of Judgment

SEC. 127. The preamble of the judgment must indicate:

The designation of the Sections and the names of the members that have participated in the decision; the names, the calling and the domicile of the parties and of their attorneys or representatives; their connection with the case; the object of the litigation; and the decisions of the Section on the main issue; and mention regarding costs.

In addition, the judgment must indicate the conclusions of the plaintiff; what he has alleged and the proofs that he has invoked; what the defendant has alleged in his response or later; the probatory means that have been admitted, those that have not been admitted and for what reasons; exposition of reasons and provisions of the law or of the present ordinance upon which the judgment is based.

If an oath has been left unsworn, the judgment shall indi-

cate the person that must make it good; the circumstances regarding which the oath has bearing; and the legal consequences that the non-fulfillment of the oath will entail.

Judgments shall be signed by all the members and by the Secretary of the Section; the copies delivered to the parties shall be signed only by the Chief and the Secretary of the Section; the signatures shall always be accompanied by the seal of the Bureau.

Contrary opinions shall be given in the judgment, along with signature, and shall remain secret as regards the parties until the judgment shall have become definitive.

Records of Proceedings

SEC. 128. At the public hearing there shall be drawn up a *procès-verbal* that shall contain the same preamble as the judgment itself. The *procès-verbal* shall be prepared by the Secretary, who must be a sworn technician or jurist official, and it shall be certified by the President.

There shall be entered in the *procès-verbal* all declarations of the parties and of their attorneys, the depositions of the witnesses and the reports of experts and persons experienced in the profession, who shall sign their depositions, their reports, or the expression of their opinion, as well as the decisions arrived at on preliminary and actual questions. These judgments shall be signed by all the members.

SEC. 129. When the debates shall have terminated and the parties shall have responded to all questions that the Section has deemed necessary to ask them, the parties or their attorneys, the witnesses and the experts, shall absent themselves, so that the Section shall remain alone in the Audience Chamber. After deliberation and vote, the decision shall be entered in the *procès-verbal*, with a short statement of the reasons; it shall then be signed by all the members and by the Secretary, and, if possible, notified immediately by the President.

SEC. 130. The Secretary shall draw up the judgment by making use of the proceedings and of this *procès-verbal* (Sec. 127).

SEC. 131. Judgments shall become definitive when they are not the subject matter of an appeal within the legal delay or when the Cassation Section confirms them.

SEC. 132. The parties and their attorneys shall have the right to consult all exhibits of the files, with the exception of the minority opinions expressed. After the closing of the litigation, each shall have the right to examine the papers in the files and to take copies thereof.

Civil Petition

SEC. 133. The civil petition may be lodged within a delay of one year after the judgment that has once concluded the litigation has become definitive, under reservation, however, of the rights that third parties in good faith shall have acquired in the interval as regards the subject matter of the litigation.

The civil petition shall be brought before the competent Section that has rendered the first judgment in the case. If there it has been adversely decided, this judgment may likewise be submitted to the examination of the Cassation Section, or there may be applied, as regards the civil petition, the provisions of Secs. 426 to 432 of the Code of Civil Procedure of the Kingdom of Serbia.

Execution of Judgments

SEC. 134. Judgments in last resort of the Bureau of Industrial Property shall be carried out in the same manner as judgments in last resort rendered by the courts. The fines adjudged against the parties, witnesses, or experts, by the Bureau of Industrial Property shall be turned over to the Treasury of the State.

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Appeals

SEC. 136. Neither the decisions and judgments rendered by the Opposition Section or during the course of the preliminary procedure, nor decisions rendered during the course of the public hearing as regards questions incidental and appearing in the *procès-verbal,* may constitute the subject matter of a special appeal; the parties may lodge complaint only through appeal directed against the basic judgment.

The appeal shall be accompanied by a sufficient number of copies to be forwarded to each of the suitors. Appeals lodged too late may be set right by the Opposition Section in summary fashion; the decision on this point may constitute, within the thirty days that follow the notification, the subject matter of an appeal to the Cassation Section.

Appeals presented in opportune time shall have a suspensive effect as regards the judgments against which they are directed. The Opposition Section shall have to notify the appeal to the others interested, through the intermediary of the Referee, so that they may file their response within a delay of thirty days, which may be extended only for grave reasons.

New proofs and allegations included in the appeal may not be taken into consideration.

After the filing of the answer, or after the expiration of the delay fixed for this purpose, the whole case shall be for-

warded for judgment by the Opposition Section to the Cassation Section.

SEC. 137. The Chancery and the Archives of the Cassation Section shall be located at the Bureau of Industrial Property. The officials of this Section shall be named annually by the Minister of Commerce and Industry, on proposal of the President of the Bureau, and they shall be chosen from among the juristic officials named by Royal Decree and possessing the qualifications necessary for being Judge of First Instance. In each particular case the President of the Bureau of Industrial Property shall designate a Secretary that shall not have participated, as regards the case of which it is a question, either in the decision of the Appellate Section or in that of the Opposition Section. The rest of the necessary personnel shall be designated by the President of the Bureau of Industrial Property. The Cassation Section shall meet when necessary, on call of its Chief, and shall give decision on the basis of the facts and proofs contained in the proceedings. It shall decide at last resort.

SEC. 138. If the Cassation Section shall consider that the case has not been made the subject matter of ample inquiry, it shall refer the same to the Opposition Section, so that this latter may complete it; however, if it considers that the procedure of this latter is marred by essential formal faults, it shall annul the decision rendered and again refer the case to the said Section, to the end that this latter decide anew. The opinions of the Cassation Section shall always have an imperative character.

If, for other reasons, the decision does not respond to law or to the present ordinance, or if the explanation of reasons or the decision itself is not justified, the Cassation Section shall overrule the judgment and render another.

Decisions that are in conformity with the laws or with the present ordinance shall be confirmed. The confirmatory orders shall be delivered by the Cassation Section to the Bureau of Industrial Property in a sufficient number of copies for each of those interested to receive one and in order that one shall remain in the files.

SEC. 139. The decision of the Cassation Section shall be executory and shall be notified to the parties through the intermediary of the Bureau of Industrial Property.

The Cassation Section shall only deliberate with a full bench and decide by a majority of votes. The contrary opinions of certain members shall be noted upon the judgment, but they shall be communicated to no one. In its decision, the Cassation Section shall likewise pronounce as regards the costs of the

case after the decision of the Opposition Section.

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III. Trade Mark Oppositions

Sec. 141. The prescriptions that govern the procedure for the avoidance of patents (Secs. 117 to 134, and 136 to 139)* shall likewise be applied for the avoidance of trade marks.

If the petitioner shall withdraw from his action on the basis of Sec. 64, paragraphs Nos. 1 and 2, and if the defendant shall accept this withdrawal, the Opposition Section, if it esteems to have sufficient reasons for so doing, may of its own accord carry to a conclusion the procedure begun.

Sec. 142. Applications, petitions, memorials, oppositions, responses and decisions of which the present ordinance makes mention shall be delivered to the Bureau of Industrial Property. When a delay is fixed, the oppositions, decisions, responses and memorials, shall be reputed to have been presented on the date on which they were delivered to the mails against receipt. This provision shall not be applied to the deposits of . . . trade marks, inasmuch as, in the cases provided for in Secs. 85, 103, and 110†, it is the date of the receipt by the Bureau of Industrial Property that shall constitute the date of the deposit.

CHAPTER VI

PATENT DEPARTMENT
FISK RUBBER CO.
CUBAHY, WIS.

Violations of Industrial Property Rights

. . . . . .

Trade Mark Violations

Sec. 145. He commits a violation of a trade mark who, without authorization and in the exercise of his exploitation:

1) Puts in circulation or offers for sale goods provided with a mark protected in favor of another;

2) Counterfeits to this end a mark belonging to another.

There shall likewise be infringement of a mark when a person makes use of the mark of another with changes of such small importance, or of such kind, that the ordinary purchaser cannot detect the difference save by particularly paying attention thereto.

Sec. 146. There is likewise prohibited the illicit employ-

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*For provisions in question, see sections mentioned, in order.

†Sec. 85 (referring to applications for patents of invention) says: "Whoever shall desire to obtain a patent must present his application, directly or by mail, to the Bureau of Industrial Property, in writing and according to the formality prescribed.

"There shall be considered as the date of the application that on which the application was received by the Bureau of Industrial Property."

Sec. 103 (relating to designs and models) and Sec. 110 (relating to trade marks) —see above—are of like import.

ment or imitation of the name, the firm, or other designation, of the establishment of another for distinguishing one's own goods or those of another intended for sale, or in advertisements or announcements.

Actions in Abatement of Trouble Caused

SEC. 147. In every violation of a right of industrial property, the injured party may demand that the existence of his right be established; that other violations be prohibited; and that, to this end, necessary measures be taken; he may demand, in addition, that the damage suffered, and—if the violation has been committed knowingly—the profits that he would have been able to realize, be awarded to him.

Litigated matters of this character shall be of the jurisdiction of the ordinary Civil Courts, which are likewise competent in commercial matters.

Violations Committed Knowingly

SEC. 148. For the violations foreseen in Sec. . . . 145, which are committed knowingly, and for punishable acts, there shall be applied, in whatever concerns competence for trying and the infliction of penalties and in whatever concerns procedure and penalties:

1) In the territories in which the Austrian laws are yet valid: . . . in matters concerning trade marks, Secs. 26 to 28 of the Law of January 6, 1890* (*Reichsgesetzblatt*, No. 19);

2) In the old Hungarian territories: . . . for trade marks, Secs. 26 to 28 of the Second Legislative Article of 1890†;

3) In the Kingdom of Serbia and Montenegro: . . . for trade marks, Arts. 24 to 31 of the Laws of May 30, 1884‡; relative to the protection of marks of manufacture and of commerce in the Kingdom of Serbia.

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*For sections in question, see Austrian Trade Mark Law.

†For sections in question, see Hungarian Trade Mark Law.

‡"TITLE III. OFFENSES AND PENALTIES

"ART. 20. Any violation of the exclusive right to a mark, whether by illicit use or by counterfeiting it, gives to the injured owner the right to demand the injunction of the fraudulent mark, and its removal from the merchandise. Moreover, the owner may demand the seizure and destruction not only of the mark, but also of the tools and instruments used in their fabrication. The courts shall fix in conformity with the provisions of the Civil Code the amount of damages to be paid to the injured party. The owner can demand that, in lieu of damages, the infringer be condemned to a fine of from 50 to 300 dinars, to his benefit. The court may agree to this motion and assign to the injured party the said amount as indemnity. These provisions are applicable without prejudice to the penalties prescribed in Arts. 23, 24 and 25 of this law.

. . . . . .

"ART. 23. All merchandise bearing unlawfully the mark of a Serbian trader or producer, or in general a mark indicating it as of Serbian origin, is prohibited from entry, transit and storage in Serbia. Seizure of merchandise of this nature may be made either on the request of the local authorities or of the interested party. The goods shall be held pending a determination by the judicial authorities.

Criminal prosecution may be lodged only on complaint of the injured party.

Fines shall be inflicted to the profit of the Treasury of the State.

SEC. 149. In order to determine violation of a right of industrial property, there shall be taken into consideration the extent of the right injured, such as is shown: . . . for trade marks, by the mark itself and by the character of the goods to which it is affixed (Sec. 111, No. 2).

Military Jurisdiction

SEC. 150. The Military Tribunals shall be competent to try all infractions prohibited by the present ordinance, when they shall have been committed by soldiers.

False Indication of Origin

SEC. 151. There is prohibited the importation of any foreign merchandise marked as if it were of the origin of the country. There are also prohibited the passage in transit and the storage of such goods. Goods of this character shall be sequestered through judicial order.

This interdiction shall endure until the case shall have been settled by the Courts.

Actions Brought Before the Civil Courts

SEC. 152. With the objects for the manufacture of which violation has been attempted against a right of industrial property, and with the utensils and installations that serve exclusively or essentially in committing the violation, proceedings

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"ART. 24. If fraudulent intent is established, the offender shall be liable to a fine of from 50 to 500 dinars to the profit of the Treasury, and that without prejudice to the penalties prescribed by the Penal Code and by Art. 20 of this law.

"ART. 25. For a second offense the fine is doubled. For a third offense the offender shall be further liable to imprisonment of from fifteen to sixty days, and his establishment may be closed for a period of from three to six months. Duress may take place when one-third of the offender's property shall not suffice to pay the fine incurred. Duress shall be calculated at the rate of one day in prison to 5 dinars fine.

"ART. 26. If the accused is acquitted, and at the same time declares that the complaint is malicious, the court may on his demand condemn the plaintiff to pay damages in conformity with Art. 20 of this law.

"ART. 27. Any infringement of the provisions of Art. 5 shall subject the offender to a fine of from 5 to 200 dinars with imprisonment of from one to forty days. These penalties are to be fixed by the court.

"ART. 28. For all offenses contemplated in this law the culprit shall pay a tax of 30 dinars in stamps after judgment has been pronounced.

TITLE IV. COMPETENT TRIBUNALS AND PROCEDURE

"ART. 29. The courts of first instance and the Tribunal of Commerce of Belgrade may take cognizance of suits brought under this law.

"ART. 30. The party in interest may sue before the Court of Appeals within fifteen days.

"ART. 31. Action brought under this law may be stopped by the desistance of the plaintiff. In that case the fee to be paid shall be reduced one-half."

shall be brought in the sense of the provisions enumerated in Sec. 148, even if it be a question of a civil action.

Petitions for Determination of Rights

SEC. 153. Any person may demand of the Bureau of Industrial Property that it shall establish through a decision: that the goods that it is proposed to manufacture, to put in circulation, or offer for sale, or to utilize, or that a process that it is proposed to put in application, does not fall, in whole or in part, under the interdiction of a determined patent* and that, thus, no violation of patent will be committed.

Such a petition must be accompanied by as many copies as there are parties interested on the other side. It shall be of the competence of the Opposition Division. On petition, there must likewise be included the necessary number of exact and clear drawings and of descriptions of the object or of the process of manufacture of which it is a question.

Such a demand may refer only to a single patent, eventually to patents of addition that are related thereto, which must be enumerated exactly.

When the defendant proves that, before having received the petition, he has himself lodged complaint against the plaintiff, with the competent authority, for violation of his patent, and that his complaint, which concerns the same object, has not as yet been decided definitively through a judicial order, the procedure begun in conformity with the present provision shall be brought to an end and the petition rejected.

The procedure to be followed for the examination and decision concerning this petition shall be that which is prescribed for the action for the avoidance of a patent, with the sole modification that the costs of procedure shall be borne by the petitioner.

If the Section establishes that the manufacture, the putting into circulation, or the offering for sale, of the object in question, or the employment of the process of manufacture whereof it is a question does not constitute a violation of patent, it shall give legal acknowledgment to the petition for the determination of rights; in the contrary case, it shall reject the petition. These decisions of the Opposition Section may—the same as any other decisions—form the object of an appeal to the Cassation Section.

When the decision through which it is established that the petitioner does not commit a violation of the patent of another has become definitive, the patentee may take against the petitioner—so long as the latter remains within the limit of the

*See last paragraph of this section.

decision of the Section—no legal step for violation of his right.

. . . . . .

There shall be treated in the same way and according to the same procedure the question of knowing whether a person has the exclusive right to make use of a determined mark, or the question of the right of priority, or that concerned with the transfer of this right, when it is contested, or, finally, that of knowing whether a person may employ a mark registered by another for a class of goods other than that for which the registration was granted.

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CHAPTER VII

Fees

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Sec. 156. For each . . . mark there shall be paid, on the deposit of the application, a filing fee of 30 dinars, and for each year of protection an annuity of 25 dinars.

The annuities shall be payable in advance, either at one time for several years or year by year, counted from the date of the registration. The annuity for the first year shall be payable on the filing of the . . . mark; the annuities for the following years shall be payable before the expiration of the term for which the preceding annuity was paid. The annuities for the following years must be paid, at latest, three months after the term fixed for this payment. In this latter case, there shall be paid an additional fee of 20 dinars.

Annuities may be paid by any person.

Modification of Description

Sec. 157. Any subsequent modification of the description of a . . . mark shall occasion the payment of a fee of 20 dinars, if it is applied for by the applicant.

There shall be no fee to pay if the modification is demanded by the Office.

Other Fees

Sec. 158. In addition to the precited fees, there shall be paid, on deposit:

. . . . . .

2) Of an appeal to the Appellate Section, 50 dinars.

This fee is likewise payable: for appeals of patent agents and consulting engineers against the refusal to inscribe them in the Register (Sec. 76) and for all other appeals lodged, in the tenor of Sec. 77, against the decisions of the President of the Bureau or Chief of the Cassation Section.

3) Of an appeal to the Cassation Section (Sec. 136), 100

dinars;

4) Of a petition (application) to the Opposition Section, 100 dinars;

5) For registration of patent agents or consulting engineers newly named, 250 dinars;

6) For the transfer or the registration of an assignment of a right of industrial property . . . ; for the registration of any modification in the Register of Patent Agents or Consulting Engineers, or in the list of Probationary Patent Agents; for the annotations that are foreseen in the present ordinance or in the ordinance regarding patent agents, 25 dinars;

7) For the annotation of a litigation in the Register, 20 dinars;

8) . . . . . .

If the fees enumerated under numbers 1 to 8 are not paid in full, or if they are not paid, or if they are not paid in the manner prescribed in the present Ordinance, the petition that they concern shall be considered as null and void.

SEC. 159. . . . the certificate attesting that the . . . mark is protected shall be subject to no special fee.

In all matters treated in accordance with the procedure applied before the Civil Courts, there shall be paid the fees foreseen in the tariff annexed to the law concerning fees in the Kingdom of Serbia, chapter concerning matters of contention and non-conscientious matters. Petitions that tend to the obtention of a right of industrial property or of a right of priority may, in exceptional cases, be received without fee, if they are accompanied by no fee or insufficient fee; however, the petitioner must be reminded of the provisions of the law concerning fees and requested to pay or to complete the payment of the fee within the delay fixed; he shall be liable only for the ordinary fee, without availing himself of Sec. 50 of the law concerning fees. However, the notification fee (postal tariff) must be paid.

If the petitioner pays or completes the payment within the delay fixed, the petition shall be considered as having been presented regularly and in opportune time; in the contrary case, it shall be filed in the archives without other examination.

Persons that shall establish that they are indigent, through a certificate from the competent authorities, shall be excused from the payment of fees only in litigations lodged before the Bureau of Industrial Property.

CHAPTER VIII

FINAL PROVISIONS

SEC. 160. Whoever shall have . . . a product appear in

an international or national exposition, official or officially recognized, may claim, at latest, within the three months that follow the closing of the exposition, the protection of his right of industrial property, with priority counting from the day on which the object in question was exhibited at the exposition.

SEC. 161. With reference to the citizens or subjects of foreign countries, there shall be applied, in whatever concerns the protection of industrial property, the provisions of treaties concluded with their country of origin.

If there exists no treaty, the citizens or subjects of a foreign country shall enjoy the protection vouchsafed by the present ordinance only in case of reciprocity.

It shall be incumbent on him that invokes protection to show that reciprocity exists.

SEC. 162. Any person that enjoys, on the date of the entry into force of the present ordinance, a right of industrial property in any part whatever of the Kingdom, and shall desire that this right be protected for the whole legal term, in conformity with the provisions of the present ordinance, in the territory in which it has up to the present time been protected, shall have his right registered at the Bureau of Industrial Property, after the entry into force of the present ordinance, and this, at latest, within the three months that follow the date to be fixed by a special order. If this registration is not applied for within the delay fixed, the protection heretofore granted shall become extinct.

On express application of the petitioner, the Bureau of Industrial Property may permit that the effects of his right shall extend to all the territory of the Kingdom, for the period that yet remains to run. Applications shall be deposited in conformity with the following provisions:

. . . . . .

Trade Marks

Marks shall be deposited anew in conformity with the prescriptions of Secs. 110 to 112 of the present ordinance and they may be protected for an unlimited term. The depositor shall obtain the acknowledgment of the right of priority emanating from the old registration if he proves his right to the mark by means of an extract from the Register officially certified by the competent authority with which he has effected the first deposit, and if he pays in opportune time the deposit fee foreseen in Sec. 156, as well as the current annuity.

. . . Marks that up to the present time have been valid only in certain parts of the Kingdom, and whose effects are in the future to extend to the entire Kingdom, must not be suscep-

tible of endangering rights acquired by third parties in the territories in which these objects were not, up to the present, protected.

The annuities for . . . marks that, prior to the entry into force of the present ordinance, have been paid in stamps, shall be calculated as fees paid.

. . . Marks that shall have been registered in this manner at the Bureau of Industrial Property shall be considered as conferring independent rights of industrial property; litigations to which the validity of these rights gives occasion shall be of the competence of the Bureau of Industrial Property.

The prescriptions of the present paragraph shall not be applicable to rights of industrial property that have been granted, subsequent to October 27, 1918, by authorities or corporations within the territory of the present Austria and Hungary, within the limits fixed by the Treaty of Peace.

These provisions shall be derogatory in no way to those of the Treaties of Peace.

SEC. 163. The Minister of Commerce and Industry is authorized to fix in detail, through executory regulations, the procedure to be followed for . . . the registration of . . . marks; in addition, he shall elaborate ordinances concerning the organization of the Bureau and the exercise of the profession of patent agent and consulting engineer.

SEC. 164. Counting from its entry into force, the present ordinance shall replace the laws and legal prescriptions throughout the territory of the Kingdom that have been heretofore valid regarding the protection of industrial property; laws and legal prescriptions that come into conflict in any way whatsoever with the present ordinance are abrogated. At the same time there is abrogated No. 6 of Art. 10 of the Ordinance of April 30, 1919, concerning the organization of the Ministry of Commerce and Industry.

SEC. 165. The present ordinance shall become of effect as soon as it shall have been signed by the King and published in the official sheet of the Kingdom (*Sluzbene Norvine*);* it shall acquire force of law thirty days after the date of its publication in the precited official sheet.

We charge Our Minister of Commerce and Industry to publish the present ordinance, and all Our Ministers to watch that it be carried out. We order the authorities to proceed as the present ordinance provides and all persons to comply with same.

*Published November 27, 1920.

KOREA

UNITED STATES-JAPAN TREATY OF MAY 19, 1908. EFFECTIVE AUGUST 16, 1908*

ARTICLE I. The Japanese Government shall cause to be enforced in Korea simultaneously with the operation of this convention, laws and regulations relative to . . . trade marks . . . similar to those which now exist in Japan.

These laws and regulations are to be applicable to American citizens in Korea equally as to Japanese and Korean subjects. In case the existing laws and regulations of Japan referred to in the preceding paragraph shall hereafter be modified, those laws and regulations enforced in Korea shall also be modified according to the principle of such new legislation.

ART. II. The Government of the United States of America engages that in case of the infringement by American citizens of . . . trade marks . . . entitled to protection in Korea, such citizens shall in these respects be under the exclusive jurisdiction of the Japanese courts in Korea, the extraterritorial jurisdiction of the United States being waived in these particulars.

ART. III. Citizens of possessions belonging to the United States shall have in respect to the application of the present convention the same treatment as citizens of the United States.

ART. IV. Korean subjects shall enjoy in the United States the same protection as native citizens in regard to . . . trade marks . . . upon the fulfillment of the formalities prescribed by the laws and regulations of the United States.

ART. V. . . . trade marks . . . registered in Japan by citizens of the United States prior to the enforcement of the laws and regulations mentioned in Article I hereof shall without further procedure be entitled under the present convention to the same protection in Korea as is or may hereafter be there accorded to the same industrial . . . properties similarly . . . registered by Japanese or Korean subjects.

. . . trade marks . . . duly registered in the United States by citizens or subjects of either high contracting party or by Korean subjects prior to the operation of the present convention shall similarly be entitled to . . . registration in Korea without the payment of any fees, provided that said . . . trade marks . . . are of such a character as to permit of their . . . registration under the laws and regulations above-mentioned,

* Matter not relating to trade marks omitted.

and provided further that such . . . registration is effected within a period of one year after this convention comes into force.

ART. VI. The Japanese Government engages to extend to American citizens the same treatment in Korea in the matter of protection of their commercial names as they enjoy in the dominions and possessions of Japan under the convention for the protection of industrial property signed at Paris March 20, 1883.

"Hong" marks* shall be considered to be commercial names for the purpose of this convention.

JAPAN IMPERIAL ORDINANCE NO. 198, EFFECTIVE AUGUST 16, 1908

ARTICLE 1. In regard to trade marks in Korea, the trade mark law shall be followed; but in the said law the term "Empire" shall correspond to "Korea"; "Minister of Agriculture and Commerce" to "Resident-General"; "Patent Bureau" to "Patent Bureau of the Residency-General"; "Courts of Law" to "Residencies and the Residency-General Court"; "Local Courts" to "Residencies;" and "Supreme Court" to "Residency-General Court."

The term "Empire" mentioned in Art. 6 of the Patent Law shall be understood to mean "Japan" or "Korea," according to the application of this ordinance.

ART. 2. Trade marks bearing devices identical with or similar to the Imperial crest, national flag, military or naval flags, or orders of merit of Japan or Korea, or the national flags of other countries, may not be registered.

If a registered trade mark is in contravention of the provisions of the preceding paragraph, the registration thereof shall be invalid.

A person who has discovered that a registered trade mark falls under the provisions of the preceding paragraph may apply for a trial to the Patent Bureau of the Residency-General for the purpose of invalidating the registration thereof.

ART. 3. This ordinance shall accord the same protection to Japanese and to Korean subjects with reference to trade marks, and shall be also applicable to subjects or citizens of countries which do not exercise extraterritorial jurisdiction in Korea with reference to the protection of trade marks.

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* Trade names. Ed.

SUPPLEMENTARY ARTICLES

ART. 4. This ordinance shall take effect on August 16, 1908.

ART. 5. Trade marks registered in Japan prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens shall be regarded as trade marks registered in Korea in accordance with this ordinance; but the period for the exclusive use of the said trade marks shall correspond to the period for exclusive use of the same in Japan.

ART. 6. With reference to merchandise which has borne, prior to the operation of this ordinance, a trade mark entitled to protection in accordance with the provisions of the preceding article or a trade mark similar to the same, the provisions of Art. 16 of the trade mark law shall be applicable only to such persons as, after six months from the date of operation of this ordinance, give, sell, or store for sale the said merchandise.

ART. 7. In regard to trade marks registered in the United States prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens, no registration fees shall be collected if the owners of the said trade marks apply for registration to the Patent Bureau of the Residency-General within one year from the date of operation of this ordinance.

IMPERIAL ORDINANCE NO. 201, EFFECTIVE AUGUST 16, 1908

ARTICLE 1. The validity of rights of . . . trade mark . . . enjoyed in Japan by Japanese or Korean subjects shall extend to Japanese and Korean subjects in the Province of Kwantung and other countries where Japan may exercise extraterritorial jurisdiction.

ART. 2. The provisions relating to penalties in the . . . trade mark law . . . shall be applicable to Japanese and Korean subjects in the Province of Kwantung and other countries where Japan may exercise extraterritorial jurisdiction.

ART. 3. With reference to industrial property rights . . . enjoyed in Japan by subjects or citizens of countries other than Japan and Korea, the provisions of the two preceding articles shall be applicable only when such other countries afford protection of industrial property rights . . . to Japanese and Korean subjects in foreign countries where the said countries may exercise extraterritorial jurisdiction and when the said countries do not exercise extraterritorial jurisdiction in Korea

with reference to the protection of industrial property rights. . . .

SUPPLEMENTARY ARTICLES

ART. 4. This ordinance shall take effect on August 16, 1908.

ART. 5. Any person who has on hand for purpose of sale at the time this ordinance takes effect, merchandise fraudulently bearing trade marks owned by another person and protected by virtue of this ordinance, or bearing an imitation of such a mark, shall remove or cancel the said trade marks or withdraw the said merchandise from the market in China within six months after the operation of this ordinance.

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LATVIA

LAW OF MAY 17, 1922

I. The following paragraphs of the old Russian Regulations of 1913 regarding industry* are amended, in whatever concerns Latvia, in the following manner:

SEC. 127. When a manufacturer or a merchant desires to make exclusive use of a mark for the needs of his establishment, he must deposit the mark with the Department of Industry. To the end of effecting its deposit, he shall address an application to the Department of Industry and shall annex thereto ten facsimiles and a description of the mark. He shall indicate in his application for what goods he intends to make use of the mark.

SEC. 129. The mark deposited shall contain, in the language of the country, the following indications:

(1) The Christian name (or simply the initials) of the proprietor of the industrial or commercial enterprise, and the family name or the designation of the firm in its entirety;

(2) The place at which the establishment is located. Inscriptions in foreign languages are tolerated only by way of addition.

NOTE: The Minister of Finances may authorize exceptions in cases in which the character of the merchandise, its dimensions, or other reasons, render the observation of this paragraph impossible.

SEC. 132. The marks deposited shall be examined by the Patent Committee of the Department of Industry and, if all the conditions prescribed by law have been fulfilled, the Department of Industry will deliver a certificate giving authorization to make use of the mark.

SEC. 137. The delivery of the certificate giving authorization to make exclusive use of a mark shall be published in the *Valdibas Vestnesis*.

SEC. 143. The Department of Industry shall maintain a Trade Mark Register and it shall make a collection thereof that may be consulted by all persons interested. Marks protected shall be sent to the Committee of the Bourse and, if the Minister of Finances deems it expedient, to the Administrations of the cities.

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* The unamended provisions of the Russian Trade Mark Law are substantially the same as Esthonia: Law of April 15, 1921, which see.

FEES

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(2) Trade marks: Deposit fee, 10 francs; annual tax, in addition to the first, 5 francs; fee for assignment, 10 francs;

. . . . . .

(5) Appeal against a decision of the Patent Committee, 10 francs; for expenses, in case it is necessary to require experts or witnesses, 20 francs;

(6) For delivery of a duplicate of a ..... certificate of trade mark, etc., 5 francs;

. . . . . .

LEEWARD ISLANDS

ACT NO. 11 OF 1887

(Nos. 33/87 and 17/90)

Short title

1. This Act may be cited as the Trade Marks Act, 1887.

Definitions

2. In and for the purposes of this Act, unless the context otherwise requires:

"Person" includes a body corporate;

"The Court" means the Supreme Court of the Leeward Islands;

"The Governor" means the Governor of the Leeward Islands;

"Registrar" means the Chief Registrar of the Supreme Court of the Leeward Islands;

"Prescribed" means prescribed by general Rules under or within the meaning of this Act.

Registration of Trade Marks

Application for registration

3. (1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2) The application must be made in the form set forth in the Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Trade Marks Office in the prescribed manner.

(3) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(4) The Registrar may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Court, and the Court shall have jurisdiction to hear and determine the appeal, and make any order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5) When an applicant for the registration of a trade mark, otherwise than under an international convention, is out of the Colony, at the time of making the application, he shall give the Registrar an address for service in the Colony, and, if he fails

to do so, the application shall not be proceeded with until the address has been given.

Limit of time for proceeding with registration

4. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar shall give notice of the non-completion to the agent (if any) employed on behalf of the applicant, and, if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant (to be left at his address within the Colony, if he be out of the Colony), and if at the expiration of the latter fourteen days, or such further time as the Registrar may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned.

Particulars of trade mark

5. For the purpose of this Act a trade mark must consist of or contain, at least, one of the following essential particulars:

a) A name of an individual or firm printed, impressed or woven in some particular and distinctive manner; or

b) A written signature, or copy of a written signature, of the individual or firm applying for registration thereof as a trade mark; or

c) A distinctive device, mark, brand, heading, label, or ticket; or

d) An invented word or invented words; or

e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words or figures, or any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided that a person need not, under this section, disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Connection of trade mark with goods

6. A trade mark must be registered for particular goods or classes of goods.

Registration of a series of marks

7. When a person claiming to be the proprietor of several trade marks, which, while resembling each other in the material particulars thereof, yet differ in respect of:

a) the statement of the goods for which they are respectively used or proposed to be used, or

b) statements of numbers, or

c) statements of price, or

d) statements of quality, or

e) statements of names of places,

seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour or colours

8. A trade mark may be registered in any colour or colours, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

Advertisement of application

9. Every application for registration of a trade mark under this Act shall, as soon as may be after its receipt, be advertised by the Registrar, unless the Registrar refuse to entertain the application.

Opposition to Registration

10. (1) Any person may within one month, or such further time, not exceeding three months, as the Registrar may allow, of the advertisement of the application give notice in duplicate at the Trade Marks Office of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant.

(2) Within one month after receipt of such notice, or such further time as the Registrar may allow, the applicant may send to the Registrar a counter statement in duplicate of the grounds on which he relies for his application, and, if he does not do so, shall be deemed to have abandoned his application.

(3) If the applicant sends such counter statement, the Registrar shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the Court, and the said Court shall have jurisdiction to hear and determine the appeal, and shall hear the applicant and the

opponent and the Registrar, and shall make an order determining whether and subject to what conditions (if any) registration is to be permitted.

(4) If the applicant abandon his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may determine to be reasonable.

(5) When the opponent is out of the Colony, he shall give the Registrar an address for service in the Colony.

Assignment and transmission of trade mark

11. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Conflicting claims to registration

12. Where each of several persons claims be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined according to law, and the Registrar may himself submit, or require the claimants to submit, their rights to the Court.

Restrictions on registration

13. (1) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods, or description of goods, a trade mark identical with one already on the register with respect of such goods or description of goods.

(2) Except as aforesaid the Registrar shall not register, with the respect to the same goods or description of goods, a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods, as to be calculated to deceive.

Further restriction on registration

14. It shall not be lawful to register as part of, or in combination with, a trade mark any words the use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of Justice; or any scandalous design.

Saving for power to provide for entry on register of common marks as additions to trade marks

15. (1) Nothing in this Act shall be construed to prevent the Registrar entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any

trade mark, any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made.

(2) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not, under this section, disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

EFFECT OF REGISTRATION

Application for registration equivalent to public use

16. Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

Right of first proprietor to exclusive use of trade mark

17. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Restrictions on actions for infringement and on defense to action in certain cases

18. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark, unless in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act.

Costs of action for infringement of trade mark

19. In an action for infringement of a registered trade mark, the Court or a Judge may certify that the right to the exclusive use of the trade mark came in question, and if the Court or a Judge so certifies, then, in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the subsequent action certifies that he ought not to have the same.

REGISTER OF TRADE MARKS

20. There shall be kept at the Trade Marks Office a book called the Register of Trade Marks, wherein shall be entered

the names and addresses of proprietors of registered trade marks, notifications of assignments and transmissions of trade marks, and such other matter as may be from time to time prescribed.

Removal of trade mark after fourteen years unless fee paid

21. (1) At a time not being less than two months, nor more than three months, before the expiration of fourteen years from the date of registration of a trade mark, the Registrar shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the Registrar before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall, at the expiration of one month from the date of the giving of the first notice, send a second notice to the same effect.

(2) If such fee be not paid before the expiration of such fourteen years, the Registrar may, after the end of three months from the expiration of such fourteen years, remove the mark from the register, and so, from time to time, at the expiration of every period of fourteen years.

(3) If, before the expiration of the said three months, the registered proprietor pays the said fee together with the additional prescribed fee, the Registrar may, without removing such trade mark from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4) Where, after the said three months, a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar may, if satisfied that it is just to do so, restore such trade mark to the register on payment of the prescribed additional fee.

(5) Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

FEES

Fees for registration

22. There shall be paid in respect of applications for registration and other matters under this Act such fees as may be

from time to time prescribed by the Governor in Council, and such fees shall be levied and paid rateably to the Treasuries of the several Presidencies in the same proportions as the several Presidencies contribute to Federal Expenditures.

GENERAL

Trade Marks Office

23. (1) The Governor in Council may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and in this Act referred to as, the Trade Marks Office.

(2) Until a new Trade Marks Office is provided, the Office of the Chief Registrar of the Supreme Court shall be the Trade Marks Office within the meaning of this Act.

(3) The Trade Marks Office shall be under the immediate control of the Chief Registrar of the Supreme Court, who shall act under the superintendence and direction of the Governor in Council.

(4) Any act or thing directed to be done by or to the Registrar may, in his absence, be done by or to any officer for the time being in that behalf authorized by the Governor in Council.

Officers and clerks

24. (1) The Governor in Council, may, at any time after the passing of this Act, and from time to time, appoint such Officers and Clerks with such designations and duties as the Governor in Council shall think fit, and may from time to time remove any of those Officers and Clerks.

(2) The salaries of those Officers and Clerks shall be appointed by the Governor in Council, with the concurrence of the General Legislative Council, and the same, and other expenses of the execution of this Act, shall be paid out of the money provided by the General Legislative Council.

Trusts must not be entered in registers

25. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.

Refusal to register trade mark in certain cases

26. The Registrar may refuse to register a trade mark of which the use, in his opinion, would be contrary to law or morality.

Entry of assignment and transmission in Register

27. Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, the Registrar shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as pro-

prietor of the trade mark in the Register of Trade Marks. The person for the time being entered in the Register of Trade Marks as proprietor of a trade mark, shall, subject to the provisions of this Act and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such trade mark may be enforced in like manner as in respect to any other personal property.

Seal of Trade Marks Office

28. There shall be a seal for the Trade Marks Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Inspection of, and extracts from registers

29. Every register kept under this Act shall, at all convenient times, be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal, of the Trade Marks Office, of any entry in any such register shall be given to any person requiring the same, on payment of the prescribed fee.

Sealed copies to be received in evidence

30. Printed or written copies or extracts, purporting to be certified by the Registrar and sealed with the seal of the Trade Marks Office, of or from the registers and other books kept there shall be admitted in evidence in all Courts of the Colony, and in all proceedings, without further proof or production of the originals.

Rectification of registers by court

31. (1) The Court may, on the application of any person aggrieved by the omission, without sufficient cause, of the name of any person, or of any other particulars, from any register kept under this Act, or by any entry made, without sufficient cause, in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and, in either case, may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register; and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Registrar.

Power for Registrar to correct clerical errors

32. The Registrar may, on request in writing accompanied by the prescribed fee,

a) correct any clerical error in, or in connection with, an application for registration of a trade mark, or

b) correct any clerical error in the name, style or address of the registered proprietor of the trade mark, or

c) cancel the entry, or part of the entry, of a trade mark on the register, or

d) permit an applicant for registration of a trade mark to amend his application by omitting any particular goods, or classes of goods, in connection with which he has desired the trade mark to be registered:

Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

Alteration of registered mark

33. (1) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act; and the Court may refuse or grant leave on such terms as it may think fit.

(2) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant; and the Registrar shall be entitled to be heard on the application.

(3) If the Court grants leave, the Registrar shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Falsification of entries in registers

34. If any person makes, or causes to be made, a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

Exercise of discretionary power by Registrar

35. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for the registration of the trade mark, without giving

the applicant an opportunity of being heard personally or by his agent.

Power of Registrar to take directions of Attorney General

36. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Attorney General for directions in the matter.

Certificate of Registrar to be evidence

37. A certificate purporting to be under the hand of the Registrar, as to any entry, matter, or thing which he is authorized by this Act, or any general Rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Application and notices by post

38. (1) Any application, notice, or other document authorized or required to be left, made or given at the Trade Marks Office, or to the Registrar, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office

39. Whenever the last day fixed by this Act, or by any Rule for the time being in force, for leaving any document, or paying any fee, at the Trade Marks Office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday under the Bank Holidays Act, 1907, or any day observed as a day of Public Fast or General Thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document, or to pay such fee, on the day following such excluded day, or days, if two or more of them occur consecutively.

Declaration by infant, lunatic, etc.

40. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or of doing anything required or permitted by this Act, or by any Rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect to the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of

any other person interested in the making of any such declaration or doing any such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall, for the purposes of this Act, be as effectual as if done by the person for whom he is substituted.

Power of Governor in Council to make general rules for classifying goods and regulating business of Trade Marks Office

41. (1) The Governor in Council may, from time to time, make such general Rules and do such things as he thinks expedient, subject to the provisions of this Act,

a) for regulating the practice of registration under this Act;

b) for classifying goods for the purpose of trade marks;

c) for making or requiring duplicates of any documents;

d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Governor in Council may think fit, of any documents in the Trade Marks Office;

e) for securing and regulating the making, printing, publishing, and selling of indexes to, and abridgements of, any documents in the Trade Marks Office; and providing for the inspection of indexes and abridgements, and other documents;

f) generally for regulating the business of the Trade Marks Office and all things by this Act placed under the direction or control of the Registrar, or of the Governor in Council.

(2) The form in the Schedule may be altered or amended by Rules made by the Governor in Council aforesaid.

(3) General Rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act; and shall (subject as is hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4) Any Rules made in pursuance of this Section shall be laid before the General Legislative Council, if the General Legislative Council be in session at the time of the making thereof, or if not, then as soon as practicable after the beginning of the next session of the General Legislative Council; and they shall be advertised twice in the Gazette.

(5) If the General Legislative Council, within the next forty days after any such general Rules shall have been so laid before it, resolve that such rules or any of them ought to be annulled, the same shall, after the date of such resolution, be of no effect, without prejudice to the validity of anything done

in the meantime under such Rules or Rule, or to the making of any new Rules or Rule.

Protection of trade marks, etc., registered in the United Kingdom, or in any British colony, or foreign state

42. It shall be lawful for the Governor by Order in Council, from time to time, to make provision for the protection of inventions, designs, and trade marks patented or registered in the United Kingdom and for the protection of inventions, designs and trade marks in any British Colony or foreign state.

Provided, always, that an Order made under this section shall not come into force, without the consent of the General Legislative Council expressed by resolution, until the termination of the sitting of the next General Legislative Council which shall commence after the said Order.

Provided, also, that such Order shall be placed as soon as practicable before the Council aforesaid, and if the said Council resolve, before the passing of any such resolution as aforesaid and before the termination of such next sitting of the said Council as aforesaid, that any Order made under this section or any part thereof ought not to come into force, then such Order or part thereof shall be of no force or effect.

Authority for taking declaration under this Act

43. Any person authorized by any law in force in this Colony to take affidavits may take a declaration authorized or required to be made under this Act.

LIBERIA

LAW OF FEBRUARY 1, 1900

AN ACT SUPPLEMENTARY TO AN ACT TO PROMOTE THE PROGRESS OF THE ARTS OF MANUFACTURE, AGRICULTURE AND COMMERCE, APPROVED DECEMBER 22, 1864.*

SECTION 1. That from and after the passage of this Act, any person whether Liberian citizen or foreigner shall have the privilege of registering a "Trade Mark" or "Trade Marks" under the sanction and protection covering the granting of Letters Patent of said Act of 1864,* the applicant in all cases furnishing the Department with a clear concise description of such trade mark together with an accurate drawing of the design to be registered.

SEC. 2. It is further enacted that the fee for registering a trade mark under this act shall be ten dollars.

Any law to the contrary notwithstanding.

AN ACT TO PROMOTE THE PROGRESS OF THE ARTS, MANUFACTURES, AGRICULTURE AND COMMERCE

SECTION 1. That there shall be established an office to be termed the Patent Office, which shall be under the control of the Secretary of State, whose duty it shall be to superintend, execute and perform all such acts and things touching and respecting the granting and issuing of Letters Patent for new and useful discoveries, inventions and improvements, as are herein provided for, or shall hereafter be by law directed to be done and performed, and shall have charge and authority of all Books, Records, Papers, and all other things belonging to said office.

SEC. 2. It is further enacted, That all Patents issuing from said office shall be issued in the name and under the seal of the Republic of Liberia, and be signed by the President of the Republic, and countersigned by the Secretary of State, and shall be recorded together with Descriptions, Specifications, and Drawings in the said Office in Books to be kept for that purpose.

Every such patent shall contain a short title of the Invention or Discovery, correctly indicating its nature and design, and its terms, grant to the Applicant or Applicants, his or their Heirs, Administrators, Executors or Assigns, for a term not exceeding Twenty Years, the full and exclusive right and lib-

*As a matter of information, the Act of 1864 follows.

erty of making, using and vending to others to be used the said invention or discovery, referring to the Specifications for the particulars thereof, a copy of which Specifications with the Illustrative Drawings shall be annexed to the Patent specifying what the Patentee claims as his Invention or Discovery.

SEC. 3. It is further enacted, That any Citizen or Citizens having discovered or invented any new and useful Art, Machine, Manufacture, Process, Composition of Matter, or any new and useful Improvement in any Art, Machine, Manufacture, Process, or Composition of Matter, or having invented or discovered a new and useful application of any known substance, or matter, or Composition of Matter or any new and useful application of any known article of Manufacture, device, or apparatus, to any art Manufacture, Machine, Process, or Composition of Matter; such Invention, or Discovery, or such application not being in any Book or other Publication in this Country, before his or their Discovery thereof, may make application in writing to the Secretary of State, expressing such desire, and the Secretary of State may on due proceedings had grant a Patent therefor. But before any Inventor shall receive a Patent for any such Invention, Discovery, or New Application, he shall deliver a written Description thereof, and of the manner and process of making, constructing, using, applying and compounding the same, in such full, clear, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, apply, compound and use the same, and shall particularly specify and point out the part, improvement, or combination which he claims as his own Invention or Discovery. He shall furthermore accompany the whole with a Drawing or Drawings, and Written References, where the nature of the case admits of Drawings. The applicant shall furthermore make Oath or Affirmation that he does verily believe that he is the Original and First Inventor or Discoverer of the Art, Machine, Composition, Application, or Improvement for which he solicits a Patent, and that the same was not known or used within the limits of the Republic of Liberia, prior to his said invention, and that he is a citizen of this Republic; the said Oath or Affirmation to be taken before any person authorized by law to administer oaths.

SEC. 4. It is further enacted, That on filing such application, description and specifications and the payment of the fees hereinafter provided, the Secretary of State shall make or cause to be made an examination of the alleged new invention or discovery, and if it should appear to the Secretary of State that the same had not been invented or discovered, or known

by any other person in this country, and had not been described in any Book or other Publication in this country prior to the discovery thereof by the applicant, then it shall be the duty of the Secretary of State to issue a Patent therefor. But whenever it shall appear to the Secretary of State that the applicant was not the first Inventor or Discoverer thereof, or that what is claimed as new had been known to others in this country, or had been described in some publication in this country prior to the time of the alleged Invention or Discovery of the Applicant, then it shall be the duty of the Secretary of State to refuse the grant of Letters Patent to the Applicant therefor.

SEC. 5. It is further enacted, That if any Alien or Aliens shall have invented or discovered any new Art, Machine, Manufacture, Process, or Composition of Matter, or any new and useful Improvement of any Art, Machine, Manufacture, Process, or Composition of Matter, or has invented or discovered a new and useful application of any known substance or Machine, or Composition of Matter, or any new and useful application of any known article of Manufacture, Device, or Apparatus, to any Art, Manufacture, Machine, Process, or Composition of Matter, such Invention or Discovery, or such application not having been known or used by others within the limits of this Republic, or if any Alien or Aliens shall be the legal owner or owners of such Invention or Discovery, or application, and shall express a desire to introduce the same and put it into active operation in this country, then it shall be the duty of the Secretary of State on due proceedings held, as provided for in third Section of this Act, to issue Letters Patent therefor. But before letters patent can be granted to such Applicant, he shall deliver, with the Description of the Invention or Discovery claimed, a certificate signed and sealed by the Mayor or Governor of the City or State in which he resides, or by a duly authorized Notary Public, which certificate shall set forth that the applicant is the Original and First Discoverer of the thing claimed, or that he has purchased the right, title, and interest in this country to the said Invention or Discovery.

SEC. 6. It is further enacted, That when any alien or aliens shall have obtained Letters Patent for any invention or discovery, it shall be his or their duty to put the same in active operation in this Republic within three years from the date of the said Patent, and any refusal or neglect on the part of the Patentee to do this, shall be considered as an abandonment by him of his Patent to the public.

SEC. 7. It is further enacted, That before any application for a Patent shall be considered by the Secretary of State, the

applicant shall pay into the Treasury, or into the Office of the Secretary of State, to the credit of the Treasury, if he be a citizen of this Republic, the sum of Twenty-Five Dollars; if he be an alien, the sum of Fifty Dollars; and the moneys received under this Act shall constitute a fund for the payment of Salaries of such Assistants as the Secretary of State may deem necessary for carrying this Act into effect.

SEC. 8. It is further enacted, That every patent shall be assignable in law, either as to the whole interest or any individual part thereof, by any instrument of writing; which assignment, and also every grant and conveyance of the exclusive right under any patent to make and use, and to grant to others to make and use the thing patented within and throughout the whole or any specified portion of the Republic of Liberia, shall be recorded in the Office of the Secretary of State within one year from the execution thereof.

SEC. 9. It is further enacted, That all actions for damages for making, using, or selling the thing whereof the exclusive right is secured by any patent, and all suits, controversies, and cases arising under this Act, shall be cognizable, as well as in equity as at law, by the Supreme Court of the Republic of Liberia.

SEC. 10. It is further enacted, That it shall be the duty of the Secretary of State to make, or cause to be made, exact copies of all patents issued, and also of all drawings appertaining to the said Patents, which copies shall be properly classified and shall be retained as Permanent Records in the Office of the Secretary of State, and the said copies shall be open for inspection at reasonable hours to all who may desire to peruse the same. And it shall furthermore be the duty of the Secretary of State to furnish on reasonable terms certified copies of any Patents or Documents relating thereto.

Approved December 23, 1864.

LITHUANIA

In the Provisional Constitution of Lithuania, reported in *Vyriausybes Ziniu* (Government Gazette), No. 37, Sec. 3, it is provided that:

"The laws that have been in force until the day of publication of this Constitution, and if they do not conflict with the provisions of this Constitution, shall remain in full force and effect. Kovno, June 10, 1920."

For the provisions of the Russian law—referred to—see Esthonia—Law of April 15, 1921—which is substantially the same.

LUXEMBURG

LAW OF MARCH 28, 1883

ARTICLE 1. There shall be considered as a mark of manufacture or of commerce any sign serving to distinguish the products of an industry or the objects of commerce.

The name of a person or a corporate name may serve as a mark in the distinctive form that is given thereto by the party interested.

ART. 2. No person may pretend to the exclusive use of a mark unless he has deposited the design thereof in duplicate and the electrotype in the hands of the official designated by the government.

ART. 3. He that first has made use of a mark may alone effect the deposit thereof.

ART. 4. The act of deposit shall be recorded in a special Register and signed by the depositor or by his attorney, as well as by the official charged with receiving the deposit.

The power of attorney shall remain annexed to the record. This latter shall state the day and hour of the deposit and it shall indicate the kind of industry or commerce for which the depositor has the intention of availing himself of the mark.

A copy of the act of deposit shall be delivered to the depositor.

These acts are exempt from stamps and registration.

The description and the design of the mark shall be published in the *Mémorial.*

ART. 5. The exclusive use of the mark shall be limited to the class of objects designated in the act of deposit.

ART. 6. There shall be paid for each mark deposited a fee of ten francs.

The deposit shall be received only upon the production of the receipt showing the payment of the fee.

ART. 7. The deposit shall have effect only for ten years.

The right to the exclusive use of the mark may always be preserved for a new term of ten years by means of a new deposit.

ART. 8. Any depositor may renounce the benefits of his deposit by a declaration made according to the form prescribed by Art. 4. Mention of this declaration shall be made on the margin of the act of deposit.

ART. 9. Foreigners that exploit in the Grand Duchy indus-

trial or commercial establishments shall enjoy, for the products of these establishments, the benefits of the present law on fulfilling the formalities that it prescribes.

The same holds for foreigners and Luxemburgers that exploit their industry or commerce without the Grand Duchy, if, in the countries in which their establishments are situated, international conventions have established reciprocity for Luxemburg marks.

These conventions shall not be subject to the approval of the Legislative Power.

The deposit of marks belonging to foreigners or to Luxemburgers that have no commercial or industrial establishments in the Grand Duchy shall be of effect only so far and as long as these marks shall be protected in the country of origin.

ART. 10. A mark may be transferred only along with the establishment the objects of manufacture or commerce of which it serves to distinguish.

Every transfer of mark by act *inter vivos* shall be registered at a fixed fee of one franc seventy centimes.

The transfer shall be effective, as regards third parties, only after the deposit of an extract of the act according to the forms prescribed for the deposit of the mark.

ART. 11. The deposit of a mark made in contravention of the dispositions that precede shall be declared null on demand of any one interested.

The judgment that pronounces nullity shall be mentioned on the margin of the act of deposit after it shall have acquired force of a *res adjudicata.*

ART. 12. Every deposit of mark made in execution of existing laws shall cease to have effect on January 1, 1884, unless it has been renewed before this date in conformity with Art. 4.

The new deposit shall be exempt from the tax imposed by Art. 6.

ART. 13. The government may authorize the deposit of marks and the payment of the tax in the Consulates of Luxemburg established abroad.

PROSECUTIONS AND PENALTIES

ART. 14. They shall be punished by imprisonment of from eight days to six months and by a fine of from twenty-six francs to two thousand francs, or by either of these penalties:

a) That have counterfeited a mark and those that have fraudulently made use of a counterfeit mark;

b) That have fraudulently affixed or have made appear by addition, deletion or by any alteration whatever, upon the prod-

ucts of their industry or the objects of their commerce, a mark belonging to another;

c) That have knowingly sold, offered for sale, or put in circulation, products bearing a mark counterfeited or fraudulently affixed.

ART. 15. Unless by express stipulation, the dispositions of the first book of the Penal Code and Art. 505 of the same Code shall be applicable to the infractions foreseen by the present law.

ART. 16. He may be condemned to imprisonment for one year and to a fine of four thousand francs, or to either of these penalties, who shall have committed one of the infractions foreseen by Art. 14 within the five years that shall follow a prior condemnation pronounced through the application of the same article.

ART. 17. There may be confiscated, in whole or in part, products bearing a mark counterfeited or fraudulently affixed, as well as the instruments and the utensils having specially served in committing the crime, if the condemned party is the proprietor.

The goods confiscated may be adjudged to the complainant who shall have brought a civil action on account of or in settlement of his claim for damages.

The Court may order in every case the destruction of counterfeit marks.

ART. 18. The Court may order that the judgment be posted in places that it shall designate, and inserted in whole or in part in journals that it shall indicate, all at the expense of the defendant.

ART. 19. Criminal action for the application of the penalties fixed by the present law may be lodged only upon complaint of the injured party. This party may discontinue the action by withdrawing from the complaint, subject to claim of the Treasury against him for collection of expenses that may have been incurred.

ART. 20. Actions brought civilly shall be lodged exclusively in the tribunals of the *Arrondissement* sitting in commercial cases, whatever be the quality of the plaintiff or defendant.

ART. 21. There are abrogated the dispositions at present in force regarding marks of manufacture and, in particular, the Order of 23 Nivose, year IX, the Law of 22 Germinal, year XI, the Decrees of February 20 and September 5, 1810, the Royal Orders of December 25, 1818, and June 1, 1820, as well as the provisions of Arts. 184, 213, and 214, of the Penal Code, insofar

as they are applicable to marks of manufacture and of commerce.

ART. 22. A Royal Grand Ducal Order shall regulate the measures necessary for the execution of the present law, which shall become effective on July 1, 1883.

MALTA

ORDINANCE NO. XI OF 1899 AS AMENDED BY ORDINANCE NO. VII OF 1907

ARTICLE 1. In any procedure, act or decision in which the law is to be cited, the citation of the "law for the protection of industrial property"* shall imply the citation of this Ordinance.

. . . . . .

TITLE III

OF TRADE MARKS

What is a trade mark

72. Marks intended to distinguish the produce of any industry or articles of trade are considered to be trade marks, provided they contain at least one of the following particulars:

1) A name of an individual or a firm of a commercial partnership, printed, impressed, or woven, in some particular and distinctive manner;

2) A written signature or copy of a written signature of the individual applying for registration thereof as a trade mark;

3) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

73. The marks and words referred to in the preceding article must be different from those already legally used by other persons.

Any words or figures, or a combination of words and figures may, however, in a trade mark, be added to one or more of the particulars indicated in the first paragraph of this article.

Exclusive use of trade mark

74. Any person may have the exclusive use of a trade mark provided he shall comply with the provisions of the following articles of this title.

Application for such exclusive use

75. Whoever is willing to secure for himself the exclusive use of any trade mark shall present to the Comptroller an application to be made in the form annexed hereto, and to be accompanied by

1) two representations of the trade mark;

2) a declaration, in duplicate, stating the kind of articles to which it is intended to affix the mark, and stating whether

*Matter not relating to trade marks is omitted.

the mark is to be affixed to articles produced by the declarant, or to goods of his trade;

3) a description, in duplicate, of the mark;

4) a receipt or a declaration from the Receiver General, showing the payment of the fee established in schedule B, annexed hereto, of the fee on registration of trade marks.

Representation of trade mark

76. The representations of a trade mark shall be made on metallic plates, pieces of solid board, or parchment and similar substances which, in the opinion of the Comptroller, are the least liable to obliteration.

77. On the representations of trade marks the Comptroller shall write a progressive number and an indication of the date of the deposit; further, they shall be signed by the depositor and by the officer who received them.

Whenever this be impracticable, the said indications shall be made on small pieces of board to be joined to the representations.

Documents filed to be signed by Comptroller

78. All such documents as will be presented for the purpose of taking a trade mark shall be signed by the Comptroller.

Notice of application to be published

79. A notice of application for registration of a trade mark shall, as soon as possible, be given by the Comptroller in the Government Gazette and in two other periodical newspapers.

Opposition to application

80. Any person may, within two months from the publications of the notice referred to in the preceding article, present to the Comptroller, in duplicate, an act of opposition to the said application, and one copy of the act of opposition shall be sent to the applicant with an intimation that he may send, in duplicate, a statement of the grounds against the opposition.

If the applicant does not send such statement, his application shall be considered as abandoned; but, if he sends that statement, it shall be communicated to the person who made the opposition.

Such opposition shall be considered as withdrawn, if the person who made it shall not, by citation, demand in the competent Civil Court that registration be not granted, and shall not, on filing the citation, give sufficient security for the costs of the suit.

Term of registration

81. The application for registration of a trade mark shall also be deemed to be abandoned if, by reason of default on the

part of the applicant, registration could not be completed within one year from the date of the application.

Definite approval of application

82. When the formalities required by the preceding provisions are completed, the Comptroller shall, in default of the opposition referred to in Art. 80, or, if such opposition has been absolutely rejected, definitively approve the application for the grant of a certificate of registration of the trade mark.

Registration

83. A trade mark shall be registered as applicable to particular goods or to particular classes of goods.

When a person claiming to be the proprietor of several trade marks which, while resembling each other in the principal particulars thereof, yet differ in respect of the statement, first, of the goods for which they are used or proposed to be used; second, of numbers; third, of price; fourth, of quality; fifth, of names of places, seeks to register such marks, they may be registered as a series in one registration.

Each of the marks so registered shall, however, be deemed as registered separately.

84. A trade mark may be registered in any colour, and the proprietor shall be entitled to use it in the colour in which it was registered or in any other colour.

Power of Comptroller

85. The Comptroller may, on just grounds, refuse to register a trade mark.

In such case he must communicate his refusal in writing to the applicant, who may avail himself of the remedy referred to in Art. 17.

86. If the application be allowed by the Comptroller, the trade mark shall be entered in the Register of Trade Marks as provided in Title V.

Exclusive use of a mark

87. An applicant for the registration of a trade mark shall be entitled to the exclusive use of the mark from the date of the application for registration; but he shall not be entitled to institute any proceeding to recover damages for an infringement of his patent which occurred before the publication of the certificate of registration in the Government Gazette.

Registration does not guarantee

88. The registration does not guarantee the importance or authority of a trade mark, or the excellence or origin of the produce, or the existence of the other conditions required for the validity of a patent.

Right of ownership of marks registered abroad

89. The provisions contained in Art. 63* for the protection of designs or models of manufacture registered abroad shall apply to trade marks.

Successor to holder of mark

90. A representative or successor, industrial or commercial, intending to retain the mark of his author, shall comply with the provisions contained in Chapter IV of Title I in so far as they apply to the transfer of the certificate of registration of trade marks.

Transfer of patent to extend to right to trade in the goods

91. The transfer of a patent for a trade mark shall not be valid unless it extends also to the right to trade in the goods or in the class of goods in reference to which the mark was registered.

Marks registered as a series

92. Notwithstanding the provision of the last sub-section of Art. 83, such marks as are registered as a series, as provided in the first paragraph of that article, cannot be transferred separately, but they may be transferred as a whole.

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*"63. Any person who has applied for protection of a design or model of manufacture in the United Kingdom, or a British possession, or in a Foreign State, with the Government of which an arrangement has been made for mutal protection of designs or models of manufacture, shall be entitled to registration of his design under this Ordinance in priority to other applicants; and such registration shall have the same date as the date of the application made in the United Kingdom, or in the British possession or Foreign State, as the case may be.

"Provided that such application is made within four months from his applying for protection in the United Kingdom, or in the British possession, or Foreign State with which the arrangement is in force, as the case may be.

"Provided also that nothing in this article contained shall entitle the proprietor of the design or model of manufacture to recover damages for infringements happening prior to the date of the actual registration of his design or model in these Islands.

"The exhibition or use in these Islands during the period aforesaid, of the design or model of manufacture, or the publication therein during such period of a description or representation of the design or model shall not invalidate the registration of such design or model of manufacture.

"The application for the registration of a design or model of manufacture under this article, must be made in the same manner as an ordinary application under this Ordinance.

"The Foreign States to which the foregoing provisions of this article apply are the States referred to in article 6. (See following:)

"6. With respect to Foreign States, the provisions . . . shall apply only in the case of those Foreign States with respect to which Her Majesty shall, from time to time, by Order in Council, declare the provisions of Section 103 of the Imperial Act 46 and 47 Victoria, Chapter 57, to be applicable, and so long only, in the case of each State, as the Order in Council shall continue in force with respect to that State."

NOTE: Sec. 103, referred to, is substantially the same as Great Britain: Patents and Designs Act, 1907, Sec. 91, which see.

Loss of right to make use of a mark

93. The proprietor of a registered trade mark shall lose his right to use it exclusively, if, at the expiration of fourteen years from the date of the registration of the mark, he fails to pay to the Comptroller within one month the fee indicated in the schedule B, provided the Comptroller shall have sent to the proprietor of the mark two written applications for the payment of the said fee, with a notice that, in default of payment, the patent will be cancelled. Of the said applications, one must be made three months, and the other two months, before the expiration of the said term of fourteen years.

Fresh registration of cancelled mark

94. The Comptroller may, on just grounds being shown, register afresh the trade mark which was cancelled, if the applicant pays the additional fees established in the schedule.

Cancelling of mark for non-payment of fees

95. A trade mark which has been cancelled for non-payment of the fee indicated in Art. 93 shall, for the purpose of any fresh application for registration thereof, be deemed to be a trade mark still registered for a term of five years.

TITLE IV

Of the Infringement of Patents, of Copyrights in Designs and Models of Manufacture, of Trade Marks and of Actions Arising Therefrom

CHAPTER I

Of Civil Action

. . . . . .

Effects of infringement of mark

98. Whoever shall commit any act in violation of the rights of any person in whose favor a trade mark has been registered, for which, under the provisions of Chapter II of this title, he is liable to penal action, may be condemned by the competent Civil Court in the manner mentioned in Art. 96, at the instance of the proprietor of the trade mark.

Forfeiture

99. The Court, in each of the cases referred to in the three preceding articles, may, on an application from the plaintiff, also order that the machinery and other industrial means used in contraventions of the patent and of the rights of the proprietor of the designs and models of manufacture, or of the trade marks, the forged articles, and the instruments destined for their production, be forfeited, wholly or partially, and de-

livered over to the holder of the patent, without prejudice to the other compensation referred to in the preceding articles.

100. If the holder of the articles mentioned in the preceding articles acted without malice or fraud, he shall be liable only to the said forfeiture for the benefit of the injured person.

Civil action—how instituted

101. Civil action is instituted by citation.

Security

102. If, for the purpose of securing the claim for the forfeiture referred to in Art. 99, application is made for the issue of a warrant of description, or of sequestration, or of seizure, or of inhibition, the Court may, before issuing the said warrant, require the applicant to give security.

Prescription

103. Civil actions arising from this Ordinance are barred by the lapse of five years in all cases where in this same Ordinance the term within which they are to be instituted is not fixed.

CHAPTER II

Of Penal Action

Punishment

104. Whoever shall put into circulation, or sell any articles, falsely representing that they are patented, or that the design or model of manufacture, or the trade mark, applied to them, has been registered with reference to them, shall be liable to the punishment of a fine (ammenda).

A person shall be deemed to have committed the said contravention if he sells an article on which is stamped, engraved, impressed, or otherwise applied, the words "patented," "registered," or any similar word intended to express that a patent has been obtained for the article, or that the design or model of manufacture, or a trade mark has been registered.

Use of Royal Arms

105. Whoever shall, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assume or use, in connection with any trade, business, calling, or profession, the Royal Arms, or arms so nearly resembling the same as to be calculated to deceive to lead other persons to believe that he is carrying on his trade, business, calling, or profession under the said authority, shall be condemned by the Court of Judicial Police to the payment of a fine (multa).

Article 281 of Criminal Laws amended

106. The provision of Art. 281 of the Criminal Laws is cancelled and the following provisions are substituted therefor:

"281. The punishment of imprisonment or hard labour from four months to one year shall be applicable to whoever:

1) Shall forge or alter, without the consent of the proprietor, the names, marks or distinguishing signs of intellectual productions, or of the product, of any industry, or knowingly make use of such forged or altered names, marks or signs, without the consent of the owner, although they be forged or altered by others;

2) Shall forge or alter, without the consent of the proprietor, any designs or models of manufacture, or knowingly make use of such forged or altered designs and models of manufacture, although they be forged or altered by others;

. . . . . .

4) Shall, by trading in any goods in reference to which a trade mark has been registered, suppress that mark without the consent of the proprietor thereof;

5) Shall apply to any goods a false trade description, that is to say, shall apply thereto, forged or altered, a figure, word, or mark which according to commercial usage indicates

a) The number, quantity, measure, gauge, or weight of the goods;

b) The place or country in which the goods were made or produced;

c) The mode of manufacturing or producing the goods;

d) The fact that the goods are the subject of an existing patent, privilege, or industrial copyright;

For the purposes of this sub-section, any figure, word, or mark which, according to the custom of the trade, indicates any of the above matters, shall be deemed to be a trade description thereof.

6) Shall knowingly put into circulation, sell, or have in his possession for sale, or introduce from abroad for any purpose of trade, any goods having a fraudulent imitation of a mark, sign, or emblem;

7) Shall knowingly make, have in his possession, or transfer to any person, any die, block, machine, or other instrument, for the purpose of forging, or of being used for forging, a trade mark.

"281A. In each of the cases referred to in the first four sub-sections of the preceding article, it will be presumed that the defendant acted wilfully, unless he proves that he acted without criminal intent.

"281B. In the last case referred to in §1 and §2 of Art. 281, and in the cases foreseen in paragraphs 2 and 4 of that

article, the burden of proving the assent of the proprietor shall be on the defendant.

"281c. In the case contemplated in the fifth sub-section of Art. 281, a trade description may be false in the meaning therein stated, notwithstanding that the trade description is a trade mark or part thereof.

"281d. In the case contemplated in the sixth sub-section of Art. 281 it will be presumed that the defendant acted maliciously, unless he proves

1) That, having taken the necessary precautions against contravening the provision of that sub-section, had, at the time of the commission of the offence with which he is charged, no reason to suspect the genuineness of the mark or sign;

2) That, on being required to do so by any member of the Police, he gave all the information in his power with respect to the persons from whom he had obtained the things referred to;

3) That he acted innocently.

"281e. In the case contemplated in the seventh sub-section of the said Art. 281, no punishment shall be applied if the defendant proves

1) That his ordinary business is to make, on behalf of other persons, dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or for applying marks, signs or emblems to goods;

2) That in the case which is the subject of the charge, he was so employed by some person resident in Malta, and he was not to share in any manner in the profit to be derived from the sale of the goods to which such marks, signs or emblems might be applied.

"281f. In cases where, under the preceding articles, a person has applied a trade mark or sign or trade description to goods, it will be held that the defendant has so applied such mark, sign or description, not only if he actually applied it to the goods themselves, but also if, first, he has applied it to any covering, label, reel, or other thing in or with which such goods are sold, exposed for sale, or held in possession for the purpose of sale, trade, or manufacture; second, he has placed, enclosed, or annexed any goods which are sold, exposed for sale, or held in possession for the purpose of sale, in, with, or to any covering, label, reel or other thing for which a trade mark has been registered or to which a trade description is applicable; third, or has used a trade mark in any manner calculated to lead to the belief that the goods to which they have been applied are those which are really so designated by the trade mark, sign,

or description above mentioned.

"281G. The word "covering" as used in this Ordinance includes any stopper, cork, bottle, vessel, box, cover, capsule, case, or wrapper; and the word "label" includes any band or ticket indicative of the thing to which it is affixed.

"281H. For the purposes of the fifth sub-section of Art. 281, where a watch case has thereon any words or marks indicating, or generally considered as indicating, the country in which the watch case was made, and the rest of the watch bears no indication of the country where it was made, the existence of the said words or marks in the watch case shall be deemed to be a presumption *juris* that they indicate the country where the watch was made."

Addition by Art. 5 of said law

107. The following paragraph is inserted after sub-section 4 of the first paragraph of Art. 5 of the Criminal Laws and before the last sub-section of that article, "(5) against any person who, being in these islands, shall become principal or accomplice in any of the offences referred to in Art. 281, although it shall have been committed out of these islands."

Admission by accused and by his wife or her husband as witnesses

108. The accused, and his wife or her husband, as the case may be, may, at the request of the accused, be called as witnesses in the trial, in which case they shall be sworn and examined in like manner as any other witness, and all provisions of the law relating to witnesses shall generally apply to them.

Powers of Magistrates of Judicial Police

109. Pending any proceeding instituted by citation or by the arrest of the accused, for any one of the offences referred to in this title, any Magistrate of Judicial Police, if he is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which the offence has been committed are in any house or premises of the defendant, or are in his possession or under his control in any other place, may, by a warrant under his hand, direct any officer of the Executive Police to be named in the warrant, to enter any house, premises or place also to be named therein, to search there for, seize, and remove such goods or things.

110. If the owner of any goods or things which, if be had been convicted of any one of the offences referred to in this title, would be liable to forfeiture, is unknown or cannot be found, any Magistrate of Judicial Police may in the like manner

issue the said warrant, under the circumstances required in the preceding article.

Forfeiture of things seized

111. The goods and things so seized shall be produced before the Court of Judicial Police sitting as a Court of Criminal Judicature, which will determine whether the same are liable to forfeiture under this Ordinance.

112. In the case referred to in Art. 110, the Court shall issue a ban, which shall twice, with an interval of at least eight days, be published in the Government Gazette, and posted up at the entrance of the building wherein the Court sits, and in such other place as the Court may deem fit, containing an intimation to the owner of the goods or things seized and to all other persons interested therein, that, unless at the time and place named in the ban they shall attend before the Court and show cause to the contrary, the said goods or things shall be forfeited.

If the owner or any person on his behalf, or other person interested in the said goods or things, fails to attend on the day and at the hour referred to in the ban for the purpose of showing cause as above stated, it shall be lawful for the Court to direct that the said goods or things be forfeited.

Powers of the Court of Judicial Police

113. The Court may direct that the goods or things be destroyed or sold, after the trade marks or other marks have been obliterated from them, and may also direct that, out of the proceeds of the sale of the things forfeited and up to the amount thereof, any persons who, being in good faith, were injured by the forfeiture, be awarded compensation for any loss caused to them.

Prescription

114. Criminal actions referred to in this title are barred by prescription after the lapse of three years from the day on which the act wherein the action originated was committed, in all cases where the person to whose detriment the act was committed, had no previous knowledge thereof; in other cases the term of prescription shall be one year from the day on which such person became aware of that act.

Imported goods

115. The importation of goods which, if sold, would, under this Ordinance, be liable to forfeiture, and also all goods manufactured out of these islands and out of the United Kingdom, bearing any Maltese or English name or trade mark, and not being, in the latter case, accompanied by a definite indication

of the country in which such goods were produced, is prohibited.

This provision shall not be applicable to goods which shall be landed in these islands to be re-exported.

116. Forfeiture shall take place *ipso jure* if, within one month from the date of the publication of a notice hereunder referred to, they are not claimed by any one.

The said notice shall indicate the articles to be forfeited and the cause of forfeiture; shall state that, unless claimed, by an official letter or by any other letter addressed to the person who signed the notice, within one month from the date of such notice, the said goods shall be forfeited; shall be signed by the Collector of Customs; shall be published twice, with an interval of at least fifteen days, in the Government Gazette and in any other periodical newspaper, and shall be posted up at the entrance of the Custom House and in the Commercial Exchange.

117. If the goods are claimed, the Crown Advocate shall, as soon as possible, apply to the First Hall of Her Majesty's Civil Court by way of petition for an order for the forfeiture of the goods seized.

118. The Collector of Customs may, before refusing to deliver the goods referred to in Art. 115, and before proceeding, after the publication of the said notice, with a view to the forfeiture of the said goods—and the Crown Advocate may, before instituting the proceedings mentioned in the preceding article, require the provisions of the regulations hereunder named to be complied with by the parties concerned, and they shall satisfy themselves, in accordance with those regulations, that the said articles are among those the importation of which is prohibited under this Ordinance.

Powers of Head of the Government

119. The Head of the Government may make, revoke and vary regulations, either general or special, respecting

1) The seizure and forfeiture of goods the importation of which is prohibited by Art. 115;

2) The conditions to be fulfilled before such seizure or forfeiture;

3) The information, notices, and security to be given, and the evidence requisite for the purposes of the preceding article;

4) The reimbursement to the Government by the person who had given the information on which the said articles were unjustly seized or forfeited, of all expenses and damages incurred in consequence of such unjust seizure or forfeiture, and of any proceedings consequent on such seizure or forfeiture.

Presumption of warranty as to genuineness of mark

120. For the purposes of this Ordinance, on the sale of any things to which a trade mark, or other mark, or trade description has been applied, the vendor shall be deemed to warrant that the trade mark, other mark, or description is genuine and not forged, unless the contrary is proved by some writing signed by the vendor and delivered, at the time of the sale, to the purchaser and accepted by the latter.

Use of forged marks

121. The provisions of this Chapter referring to the use of forged marks shall not apply to the use which will be made of any mark of manufacture or description used in trade to indicate any goods of any particular kind, or their manufacture by any particular method, where, at the promulgation of this Ordinance, that mark or description is lawfully and generally applied for the above mentioned purpose.

If, however, such mark or description includes the name of a place or country where the goods to which the genuine commercial designation thereof refers were produced, and such name is calculated to mislead as to the place or country where the goods were actually produced, and the goods were not produced in the place or country indicated in the description in use—the provision contained in the preceding paragraph shall not apply, unless there is added to the mark immediately before or under the name of the said place or country, in an equally conspicuous manner, the name of the place or country in which the goods were actually made or produced—and unless there is also stated that the goods were made or produced in that place or country.

122. The provisions of this Chapter shall apply without prejudice to the payment of damages to persons entitled thereto.

No one exempt from declaring anything he knows

123. No person shall be exempt from declaring anything which he knows, nor shall any witness be exempt from giving evidence in any proceeding, on the ground that he might become liable to be prosecuted for any one of the offences contemplated in this Chapter; but such declaration or evidence shall not be admissible in evidence against such person in any proceeding instituted with reference to such offence.

Good faith

124. No proceeding shall be instituted against any servant of a master resident in these islands, if he bona fide acted in obedience to the instructions of such master, and, being questioned by the Police, has given full information as to his master.

TITLE V

Of the Registers of Patents, of Designs and Models of Manufacture, and of Trade Marks

Registers to be kept in Public Registry

125. There shall be kept in the Public Registry . . . a Register of Trade Marks.

What they shall contain

126. In each of the said books the patents issued . . . shall be entered, and so also all subsequent modifications, as well as revocations, declarations of nullity, and forfeitures of the said acts, and such other matters the registration whereof shall be prescribed by the regulations made by the Head of the Government.

Register of transfers

127. There shall also be kept in the Public Registry a Register of Transfers of . . . trade marks, and an annotation of such transfers shall be made against the original entry of the . . . right transferred.

Annotation in Registers

128. In the office of the Comptroller, as well as in the Public Registry, there shall likewise be kept three other registers in each of which shall be entered, under a progressive number, with reference to the subject to which each book refers, all documents filed, the names, surnames, country, father's name and place of domicile of applicants and their attorneys, the subject of applications, and the date of presentation.

To these entries there shall be added, . . . third, in the Register of Applications for registration of trade marks, an indication of the object for which the marks are destined.

. . . . . .

130. In each of the Registers referred to in the preceding articles, a column shall be reserved for any annotations which may occur.

Alphabetical index

131. To each of those Registers there shall be added an alphabetical index of the surnames and names of those persons whose right or application has been registered.

In the index of the Registers for applications and transfers, reference shall be made to the progressive number of the general register.

Registers to be accessible

132. Saving the provision of Art. 69, the said Registers shall be open to any person in the Public Registry, and copies

or extracts thereof, written or printed, signed by the Director of the Public Registry, be given to any person applying for the same on payment of the fees established in the annexed schedule, to be made at the time of the application.

Registers and Extracts to be Evidence of Their Contents

133. The Registers as well as extracts from the Registers, and certificates signed by the Director of the Public Registry, shall be evidence of their contents, until proof to the contrary.

No proof of their authenticity is required other than that which they bear on the face of them.

Rectification or cancelling of registrations

134. Any person may judicially apply for the rectification or cancelling of any entry made, or for the entry of any act which the Comptroller may have refused to enter.

Proceedings

The application shall be made in the First Hall of Her Majesty's Civil Court, on a citation being made against the Comptroller, the Director of the Public Registry, and a Curator to be appointed by the Court for any person having interest in the matter.

135. Fifteen days at least before the trial of the cause relating to the application referred to in the preceding article, a notice shall, by order of the Court, be published in the Government Gazette, calling upon any interested party to declare, within fifteen days from the publication of the said notice, by a note, whether he intends to oppose such application.

To those persons who shall, within the said term, have filed such notes, notice shall be given of the day appointed for the hearing of the cause.

136. The provisions of the two preceding articles shall not prevent the application of the provisions contained in Arts. 977, 978, and 979 of the Laws of Organization and Civil Procedure.

Term for making rectification, cancelling, or entry

137. The rectification, cancelling, or entry ordered by the Court shall be made by the Comptroller and the Director of the Public Registry within the term of ten days from the day on which the judgment shall have become final and absolute.

Reference to the judgment shall be made by a note in the margin of the respective Register.

A rectification, however, consisting in rectifying an error incurred in transcribing an act in the Register may be made by the Comptroller under the simple authority of the Director of the Public Registry.

The Director giving the aforesaid authority shall countersign the rectification made.

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Copy of marks to be sent to Chamber of Commerce

139. A copy of the trade marks or other marks which, according to Art. 75 are to be sent to the Comptroller, shall be kept by him, and rendered accessible to the public, and another copy shall be sent by him to the Chamber of Commerce, whose duty it shall also be to keep the said articles and to render them accessible to the inspection of the public.

TITLE VI

CHAPTER I

Special and Transitory Provisions

Power of Head of Government to make regulations

140. The Head of the Government shall have power to make, from time to time, regulations referring to what may become necessary to put in force this Ordinance. Such regulations shall be published by a notice in the Government Gazette.

Fees under this Ordinance

141. The fees payable to the Government according to the provisions of this Ordinance shall be taxed and levied in accordance with the schedules hereto annexed.

Costs of proceedings

142. The costs in the various proceedings which shall be instituted under this Ordinance shall be taxed and levied according to the tariffs annexed to the Laws of Organization and Civil Procedure.

When this Ordinance is to take effect

143. This Ordinance shall take effect on 1st January, 1900.

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CHAPTER II

Repeal

147. From the date on which this Ordinance commences to take effect, the following legislative enactments, saving the provision of Art. 144*, shall be repealed and abrogated, except in so far as they repeal other provisions, namely, Ordinance No. V of 1893, Ordinance No. I of 1894, and any other ordinance, law, or regulation which is contrary to, or incompatible with, the provisions of this Ordinance.

* Reference to patents only.

MAURITIUS

ORDINANCE NO. 18 OF [OCTOBER 20,] 1868

Construction of Words

I. In the construction of this Ordinance the word "person" shall include any person, whether a subject of Her Majesty or not, and any body corporate or body of the like nature whether constituted according to the law of this Colony or of any of Her Majesty's Dominions, or according to the law of any foreign country, and also any company, association or society of persons, whether the members thereof be subjects of Her Majesty and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established or carry on business within this Colony or elsewhere, or partly within this Colony and partly elsewhere. The word "mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description. The expression "trade-mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark as aforesaid lawfully used by any person to denote any article of trade, manufacture, or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article of any peculiar or particular description made or sold by such person.

All Trade-Marks to be Registered

II. No mark shall have the character of a trade-mark in this Colony until it has been duly registered in manner as hereinafter provided.

Application for Registration

III. Every person wishing to register a trade-mark which he has a right to use shall, for that purpose, either by himself or by any party duly authorized by him on that behalf, make application in writing to the Collector of Customs of this Colony.

The application shall state what articles of trade, manufacture, or merchandise, being the manufacture, workmanship, production or merchandise of the applicant, such trade-mark is intended to denote; and it shall further state, if necessary, to what peculiar or particular description of such article the said trade-mark is intended to apply. To the said application shall be joined a facsimile of the trade-mark to be registered.

Mode of Registration

IV. The Collector of Customs shall keep a Register of Trade-Marks duly numbered and initialed by one of the District Magistrates of Port Luis, upon which he shall transcribe every application made to him as aforesaid. He shall mention in the margin of the transcription the date when he received the application, and he shall give a number to each such application. He shall make the same mention, and affix the same number upon the trade-mark deposited with him, and he shall file and keep the said trade-mark in a proper and convenient place in his office. He shall then return to the person who has applied for the registration of a trade-mark the written application made by such person, after endorsing thereupon a certificate of registry, in the form of Schedule A hereunto annexed.

Every person who has caused a trade-mark to be registered shall give notice thereof in three daily newspapers, and such notice shall contain a summary description of the trade-mark and the date of its registration.

The Collector of Customs shall in the beginning of each month publish in the Government Gazette a list containing the names of the parties who have registered trade-marks, the date of the registration, and a summary description of the trade-mark registered.

Registered Trade-Marks Presumed Genuine

V. Every trade-mark deposited with the Collector of Customs, and touching which a certificate of registry has been delivered by the Collector, shall, in every Court in this Colony, be presumed to be a genuine trade-mark, unless proof to the contrary be adduced, and it shall be, as such, admissible in evidence in every criminal prosecution under this Ordinance as well as in every civil action which the proprietor of the trade-mark may be entitled to at law, in equity, or otherwise.

Registration Fee

VI. A fee of £1 shall be paid into the hands of the Collector of Customs for each certificate of registry delivered by him under the provisions of this Ordinance.

Right of Search

VII. Upon payment of a fee of two shillings it shall be lawful for any person to examine the Register of Trade-Marks kept by the Collector of Customs, as well as the trade-marks filed in his office.

The fees mentioned in this article and in the preceding article shall be paid into the Colonial Treasury.

Counterfeiting a Trade-Mark

VIII. Every person who, with intent to defraud, or to

enable another to defraud any person, shall counterfeit, or cause or procure to be counterfeited any trade-mark, or who shall sell, barter, utter or register any counterfeit trade-mark, or who shall obliterate an original trade-mark, shall be punished by imprisonment, with or without labor, for a term not less than one month and not more than one year and by a fine not exceeding £20.

Applying Counterfeited Trade-Marks

IX. Every person who, with intent to defraud or to enable another to defraud any person, shall apply, or cause or procure to be applied, any counterfeited trade-mark to any article of trade, manufacture or merchandise, shall be punished by imprisonment, with or without labor, for a term not less than one month and not more than one year, and by a fine not exceeding £20.

Such person shall also, upon conviction, incur the forfeiture of every article to which he shall have so unlawfully applied or caused or procured to be applied any such counterfeited trade-mark.

Falsely Applying any Trade-Mark

X. Every person who, with intent to defraud or enable another person to defraud any person, shall apply or cause or procure to be applied any trade-mark, whether genuine or counterfeited, to any article not being the manufacture, workmanship, production or merchandise, or not being the particular or peculiar description thereof, denoted or intended to be denoted by such trade-mark, shall be liable to the penalties and forfeiture imposed by the preceding article.

Selling Articles with False Trade-Marks

XI. Every person who, after the 1st November, 1868, shall sell, utter, or expose either for sale or for any purpose of trade or manufacture, or cause or procure to be sold, uttered, or exposed for sale or other purpose as aforesaid any article, together with any counterfeited trade-mark, which he shall know to be counterfeited, or together with the trade-mark of any person applied or used falsely or wrongfully; or without lawful authority or excuse, knowing such trade-mark of another person to have been applied or used as aforesaid, shall for every such offence forfeit a sum of money equal to the value of the article so sold, uttered, offered, or exposed for sale or other purpose as aforesaid, and a further sum not exceeding £5, and not less than £1.

Counterfeit of Mark and Counterfeiting Defined

XII. Every addition to, and every alteration of, and also every imitation of any trade-mark which shall be made, applied

or used with intent to defraud, or to enable others to defraud, or which shall cause a trade-mark with such alteration or addition, or which shall cause such imitation of a trade-mark to resemble any genuine trade-mark, so as to be calculated or likely to deceive, shall be deemed a counterfeit trade-mark within the meaning of this Ordinance; and every act of making, applying or using any such addition to or alteration of a trade-mark, or any such imitation of a trade-mark as aforesaid done by any person with intent to defraud or to enable others to defraud, shall be deemed to be counterfeiting a trade-mark within the meaning of the present Ordinance.

Affixing of Mark Defined

XIII. For the purposes of the present Ordinance a trade-mark shall be deemed and taken to be applied to any article of merchandise, although the same may not be directly applied thereto, but may be applied to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket or other thing in or with which such article shall be intended to be sold or uttered, or exposed for sale, or intended for any purpose of trade or manufacture.

Vendor of goods illegally marked to account for possession—Penalty for refusal—Refusal to be evidence of guilt

XIV. When any person who, at any time after the 1st November, 1868, shall have sold, uttered or exposed for sale or other purpose as aforesaid, or shall have caused or procured to be sold, uttered or exposed for sale or other purpose as aforesaid, any article together with any counterfeit trade-mark or together with the trade-mark of any other person used without lawful authority or excuse as aforesaid, such person shall be bound, upon demand in writing delivered to him or left for him at his last known dwelling house or at the place of sale as aforesaid, by or on behalf of the person whose trade-mark shall have been so counterfeited or used without lawful authority or excuse as aforesaid, to give to the person requiring the same or his attorney or agent, within 48 hours after such demand, full information of the name and address of the person from whom he shall have purchased or received such article and of the time when be obtained the same, and it shall be lawful for any District Magistrate, on information on oath of such demand and refusal, to summon before him the party refusing, and, on being satisfied that such demand ought to be complied with, to order such information to be given within a certain delay to be appointed by him.

And any such party who shall refuse or neglect to comply

with such order, shall for every such offence forfeit and pay to Her Majesty the sum of £5.

Any such refusal or neglect shall be primâ facie evidence that the person so refusing or neglecting had full knowledge that the trade-mark, together with such article was sold, uttered or exposed as aforesaid, at time of such selling, uttering or exposing, was a counterfeit trade-mark, or was the trade-mark of a person which had been used without lawful authority or excuse as the case may be.

Commonplace Designation of Goods, Not Prohibited

XV. Provided always that the provisions of this Ordinance shall not be construed so as to make it any offence for any person to apply to any article of trade, manufacture, or merchandise, any name, word or expression generally used for indicating such article to be of some particular class or description of manufacture only, or so as to make it any offence for any person to sell, utter of offer, or expose for sale any article to which any such generally used name, word or expression, as aforesaid, shall have been applied.

Mention of Mark in Information

XVI. In every information, pleading, proceeding, and document whatsoever, in which any trade-mark or counterfeit trade-mark shall be intended to be mentioned, it shall be sufficient to mention or state the same to be a trade-mark or counterfeit trade-mark, as the case may be, without further or otherwise describing such trade-mark or counterfeit trade-mark or setting forth any copy of facsimile thereof.

Allegation of Fraud in Information

XVII. In every information, conviction, pleading, and proceeding against any person for any offence against the provisions of this Ordinance in which it shall be necessary to allege or mention an intent to defraud or to enable another to defraud, it shall be sufficient to allege or mention that the person accused of such offence committed the same with intent to defraud or with intent to enable some other person to defraud, without alleging or mentioning an intent to defraud any particular person. And upon the trial for such offence it shall not be necessary to prove an intent to defraud any particular person or to enable any particular person to defraud any particular person; but it shall be sufficient to prove that the accused did the act charged with an intent to defraud or with the intent that any other person might be enabled to defraud.

Disposal of Seizures

XVIII. All articles condemned as forfeited, under any of

the provisions of this Ordinance, shall be destroyed or otherwise disposed of as the Court, pronouncing such condemnation, shall order.

By Whom Prosecution To Be Instituted

XIX. Any prosecution or other proceedings, instituted for any offence against the provisions of this Ordinance, may be instituted by any party duly authorized in that behalf by letter or power of attorney from the proprietor of the particular trade-mark alleged to be counterfeited without prejudice to the rights of the Procureur General to institute the same.

Conviction Not to Affect Any Right to Civil Remedy

XX. The provisions in this Ordinance contained of or concerning any offence, or any proceeding, judgment or conviction for any offence against this Ordinance, shall not nor shall any of them take away, diminish, or prejudicially affect any suit, process, proceeding, right, or remedy which any person aggrieved by such offence may be entitled to at law, in equity, or otherwise.

XXI. In every case in which at any time, after the 1st November, 1868, any person shall sell or contract to sell (whether by writing or not) to any other person any article with any trade-mark thereon, the sale or contract to sell shall in every such case be deemed to have been made with a warrant or contract by the vendor to or with the purchaser that every trade mark upon such article was genuine and true and not counterfeit and not wrongfully used, unless the contrary shall be expressed in some writing, signed by or on behalf of the vendor and delivered to and accepted by the purchaser.

In Suits at Law the Court May Order Article to be Destroyed, etc.

XXII. In every case, in any suit at law, against any person for counterfeiting any trade-mark or for fraudulently applying any trade-mark to any article of trade, manufacture or merchandise, or for selling, exposing for sale, or uttering any article with any trade-mark falsely or wrongfully applied thereto, or with any counterfeited trade mark applied thereto, or for preventing the repetition or continuance of any such wrongful act, or for the committal of any similar act, in which the plaintiff shall obtain a judgment against the defendant, the Court shall have power to direct every such article to be destroyed or delivered to the Poor Law Commissioners for the use of the poor, or otherwise disposed of.

In Suits at Law the Court May Order Inspection

XXIII. In every such suit, in a court of law, the Court or

a Judge thereof may make such order as such Court or Judge shall think fit for the inspection of every or any manufacture or process carried on by the defendant in which any such counterfeit trade-mark or any such trade-mark as aforesaid shall be alleged to be used or applied as aforesaid, and of every or any article or thing in the possession or power of the defendant alleged to have thereon, or in any way attached thereto, any counterfeit trade-mark or any trade-mark falsely or wrongfully applied, and every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any counterfeit trade-mark, or trade-mark alleged to be counterfeit, or for falsely or wrongfully applying any trade-mark.

Any person who shall refuse or neglect to obey any such order shall be guilty of contempt of court.

Provisional Seizure

XXIV. In any such suit, civil or criminal, in any court of law, the Court or a Judge thereof may, pending the proceedings, order the provisional seizure, and the deposit in any place, or under the guardianship of any person, as such Court or Judge shall think fit, of any article or thing, in the possession or power of the defendant, alleged to have thereon, or in any way attached thereto, any counterfeit trade-mark or any trade-mark falsely or wrongfully applied, and of every or any instrument in the possession or power of the defendant used or intended to be or capable of being used for producing or making any counterfeit trade-mark, or for falsely or wrongfully applying any trade-mark.

Indemnity to Successful Defendant

XXV. In every suit or prosecution which any person shall, under the provisions of this Ordinance, commence, as plaintiff in a civil suit, or as complainant in a criminal case, if the defendant shall obtain judgment, he shall be entitled to recover his costs of suit and further an indemnity for the charges and expenses by him expended or incurred in, about, or for the purposes of such suit or prosecution, and such indemnity shall be fixed and awarded by the Court before which the proceedings have taken place, in the judgment given by such Court.

Limitations of Actions

XXVI. No person shall commence any action or proceeding for the recovery of any penalty or procuring the conviction of any offender in manner hereinbefore provided, after expiration of three years next after the committing of the offence, or one year next after the first discovery thereof by the person proceeding.

Short Title

XXVII. The expression "The Trade-Marks Ordinance, 1868," shall be a sufficient description of this Ordinance.

Repeal of Ordinance No. 4 of 1868

XXVIII. Ordinance No. 4 of 1868, entitled "An Ordinance to Amend the Law Relating to the Fraudulent Marking of Merchandise," is hereby repealed.

Date of Operation

XXIX. This Ordinance shall come into force on and after the 1st day of November A. D. 1868.

MEXICO

LAW OF AUGUST 25, 1903

ARTICLE 1. A trade mark is the characteristic and peculiar sign or denomination used by an industrial, agrarian, or merchant, on the articles that he produces or sells, with the purpose of distinguishing them and indicating their origin.

There may, in particular, constitute a mark: names in a distinctive form, denominations, labels or brands, coverings, containers or recipients, stamps, seals, vignettes, borders, embroiderings, filagrees, engravings, escutcheons, emblems, reliefs, ciphers, devices, etc., it being understood that this enumeration is purely enunciative and not limitative.

ART. 2. To obtain the exclusive right to the use of a mark, it is necessary to effect its registration in the Patent and Trade Mark Office, by fulfilling the formalities that the present law and its regulation establish.

ART. 3. Whoever shall desire to register a mark shall present at the Patent and Trade Mark Office an application accompanied by the following:

I. A description of the mark, concluding same with the reservations that shall be made therein. In this document there shall, in addition, be given the following data: the name of the proprietor, the name of his factory or business, should he have such, the location thereof, and designation of the objects or products to which the mark is to be affixed.

If it shall be necessary, in the opinion of the party interested, there shall likewise be included a description and design of those objects or products.

II. Two copies of the foregoing document;

III. A *cliché* (electrotype) of the mark; and

IV. Twelve facsimiles of the mark, such as it is to be used.

ART. 4. Any Mexican or foreigner may register a mark. For this he must apply at the Patent and Trade Mark Office in person or through the intermediary of an attorney.

Societies, companies, and, in general, all legal persons, shall have the same right.

The qualification of attorney may be evidenced with a simple letter-power, signed in the presence of two witnesses; the Office, when it so deems expedient, may require the authentication of the signatures of said letter.

ART. 5. There may not be registered as marks:

I. Generic names or denominations, when the marks pro-

tects objects that are comprised in the class or kind to which the name or denomination refers, inasmuch as the indispensable requisite for a denomination or name being possible of serving as a mark, is that of it being susceptible of indicating, or causing to be distinguished, the goods so protected, clearly, apart from others of their same kind or class;

II. Anything that is contrary to morality, to good usage, or to prohibitive laws, and anything that tends to ridicule ideas, persons, or objects, worthy of consideration;

III. The National coat-of-arms, escutcheons, and emblems;

IV. The coats-of-arms, escutcheons, and emblems, of the States of the Federation, National or foreign cities, foreign nations and States, etc., without the respective consent thereof.

V. The names, signatures, seals, and portraits of individuals, without their consent.

ART. 6. The registration of a mark shall be renewed every twenty years. Delay in effecting such renewal shall not, in itself, give rise to the loss of the rights to the exclusive use of a mark, but there shall be incurred, as regards the interested party, a surcharge in addition to the fiscal fees that must be paid in accordance with what the Regulation stipulates, and, until such renewal is effected, the party interested shall have no right to criminal accusation against those that wrongly use or counterfeit a mark.

ART. 7. A mark whose registration is petitioned in Mexico within four months after having been applied for in one or several foreign States, shall be considered as having been registered on the same date as it was in the first foreign State in which it shall have been registered, provided that that first State concedes to citizens of Mexico this same right.

Accordingly, any mark registered in Mexico under these conditions shall have absolutely the same force and shall produce the same effects as it would have if it had been registered on the same day and hour as it was in the said first foreign State.

ART. 9. Registered marks shall bear visible legends that shall read, respectively:

I. Those that manufacturers, industrials, agrarians, etc., use: *"Marca Industrial Registrada,"* (Registered Industrial Mark), or even *"M. Ind. Rgtrda."*, the number and date of registration;

II. Those that merchants use: *"Marca de Comercio Registrada"* (Registered Mark of Commerce), or even *"M. de C. Rgtrda.,"* the number and date of registration;

III. When marks consist of names, denominations, legends,

etc., or in initial letters or abbreviations; or when, consisting in signs that are not letters, these are accompanied by names, denominations, etc., or initial letters or abbreviations, the said marks must necessarily bear, in a conspicuous manner, the name of the owner of the industry, the name of the business, factory, etc., if he shall have such, and the location thereof.

ART. 10. The registration of a mark shall be effected without prior examination as to its novelty, under the exclusive responsibility of the applicant and without prejudice to third parties.

The Patent and Trade Mark Office shall make a purely administrative examination of the documents presented, to the end of ascertaining whether they are complete and fulfill the requisites that—as regards their form—this Law and its Regulation stipulate.

If the Patent and Trade Mark Office shall find that the documents do not fulfill the requisites, as to their form, the examination of which is incumbent on it; that the mark does not, in its turn, bear the legends of which No. III of Art. 9 speaks; or even that what it is attempted to register is comprised in what Art. 5 prohibits—in its Nos. II and III—it shall consider the documents as not presented, and shall so advise the party interested by means of a notification.

If the party interested shall not be satisfied, he may appeal to the Courts, in accordance with what Chap. III of this law stipulates.

In case the Patent and Trade Mark Office is satisfied as to the regularity of the documents presented, it shall so advise the party interested by means of a notification.

ART. 11. The certificate of registration of a mark shall be issued by the Patent and Trade Mark Office. This certificate, duly legalized and with the documents thereto annexed, shall constitute the title deed that accredits the right to the exclusive use of the mark.

ART. 12. Registered marks may be transferred and disposed of the same as any other right; however, it shall be an indispensible requisite that there be made to appear thereon the name of the transferee, when they are in the case to which No. III of Art. 9 refers.

Their transfer shall be registered in the Patent and Trade Mark Office, and without this requisite it will be without effect as regards third parties.

ART. 13. The transfer of a mark carries with it the industrial or commercial exploitation of the industrial products or commercial goods protected thereby.

ART. 14. Change of location of the establishment in which there are manufactured or sold the goods that a mark protects, or the fact of these same goods being manufactured or sold, in an establishment different from that in which they were formally manufactured or sold, shall be registered in the Patent and Trade Mark Office, and it shall be made likewise to appear on the respective mark when this has to bear the legend to which No. III of Art. 9 refers.

ART. 15. The registration of a mark shall be null when it shall have been made in contravention of the dispositions of this law and its Regulation, or when the mark has been registered previously by another if that registration is of more than two years, or if, being of less than two years, it has been effected with better right.

ART. 16. Action for petitioning the avoidance of a mark shall correspond to any one that shall believe himself prejudiced thereby, and by the Public Ministry, in cases in which there may be some general interest.

ART. 17. The final judgment that declares avoidance of a mark shall be communicated to the Patent and Trade Mark Office by the Judge that has had cognizance of the case, and it shall be published in the *Gaceta Oficial de Patentes y Marcas.*

CHAPTER II

PENALTIES

ART. 18. He shall be punished with from one to two years of imprisonment and a fine of from one hundred to one thousand pesos, or either penalty, that places upon the goods that he manufactures or sells a mark already registered legally in favor of another person, with the purpose of protecting similar articles.

He shall be punished with the same penalty that, in like manner as the preceding paragraph stipulates, shall place upon his goods a mark that is an imitation of one legally registered, in such way that, at first sight, it be mistaken for the legal one and only by means of a close examination can the one be distinguished from the other.

Like penalty shall be imposed on him that places upon his goods a mark that, although legally registered, is made to appear as if it were another, through any addition, deletion, or alteration.

ART. 19. He shall be punished with minor detention and fine of the second class, or either penalty, at the discretion of the Judge, that, without being the author of the acts that the preceding article enumerates, deceitfully sells, places on sale

or in circulation, goods marked in the manner that the same article sets forth.

ART. 20. He that, without committing any of the crimes that the two preceding articles specify, shall make use of a mark wherewith—whether by its simple aspect or because of the legends or indications that accompany it—he may deceive the public as regards the origin of the goods on which the said mark has been affixed, shall incur the penalty of from one to two years in prison and a fine of from one hundred to one thousand pesos, or either, at the discretion of the Judge.

ART. 21. He that deceitfully sells, offers for sale or puts in circulation, goods stamped with a mark that has the defects that the preceding article indicates, shall be punished with minor detention and fine of the second class, or either, at the discretion of the Judge.

ART. 22. When, in the case forseen in the two preceding articles, the mark shall have been registered in the Patent Office, such circumstance shall be regarded as an offense of the fourth class.

ART. 23. He that shall place or affix upon his goods marks, labels, etc., in which there shall be made false indications, whether it be in an open or insidious manner, as regards the nature and composition of the objects that they protect, shall be punished with from one to two years of imprisonment and a fine of the second class, or either, at the discretion of the Judge; and he that, deceitfully, simply sells, places on sale or in circulation, goods thus marked, shall incur the penalty of minor detention and fine of the second class.

ART. 24. He that, having a legally registered mark, does not place thereon the legend that No. III of Art. 9 stipulates, or does not make, in its case, the annotation to which the final part of Art. 14 refers, shall incur the penalty of minor detention and fine of the second class, or either, at the discretion of the Judge, and he that affixes false indications shall incur the same penalty as Art. 20 stipulates, and shall also find himself included in the case forseen by Art. 22.

ART. 25. He that places on a mark the indication of it being registered in the Patent and Trade Mark Office, without this being the case, shall incur the penalty of minor detention and fine of the second class, or either, at the discretion of the Judge.

ART. 26. In case of repetition, there shall be applied, for the first time, the half, in addition to the penalties prescribed, and for each new case of repetition, the penalty shall be increased with an additional one-half, successively.

That person is a repeater that has committed the new crime of which he is accused before there shall have expired five years from the definitive sentence that has declared him culpable for any of the crimes of which this law speaks, and even though the prior crime shall have referred to another mark different from that to which the new crime refers.

ART. 27. Printers, lithographers, etc., that make counterfeit marks for those that make undue use thereof, and any person that sells or places them on sale or in circulation, shall be considered as co-authors, accomplices, etc., as the case may be, according to their respective responsibility, qualified in accordance with the principles and precepts established in the Penal Code of the Federal District.

ART. 28. Action for prosecuting any of the crimes that the preceding articles enumerate shall correspond to the Public Minister and to any other person that deems himself injured, and, once initiated, the case shall be prosecuted *ex officio* by all means.

ART. 29. In the case of Arts. 18, 19, and 27, the owner of the mark legally registered shall have, in addition, the right of requiring of the author of the crime indemnification for damages and injuries.

He may, likewise, petition that all the products be adjudicated that bear the illegal mark, whether they be in the possession of the person that is designated as author of the crime, or in the possession of any other merchant, commission merchant, or consignee; however, it will be an indispensable requisite for this right being possible of being exercised that the owner of the mark shall not have omitted to place thereon any of the legends that Art. 9 requires.

The owner of the mark shall have the right, likewise, to there being delivered to him all the marks, instruments of the crime, that are found in the possession of the author of the crime or of his accomplices, and, in their case, that there be also delivered to him the instruments or apparatus especially dedicated to the fabrication of the said marks.

ART. 30. In addition to the proviso of the preceding article, the owner of the mark may petition the Judge, whether before making his respective demand, or during the hearing, for the assurance of the objects to which the second and third paragraphs of the same article refer, and name on his own responsibility a trustee therefor; however, the indispensable requisites for carrying into effect the said assurance, shall be:

I. That there be presented the certificate of the Patent and Trade Mark Office that evidences that the mark whereof it is a

question has been duly registered;

II. Evidence by means of the corresponding title, duly registered in the same Office, that the petitioner is the owner of the mark;

III. Verification by any legal means of the *corpus delicti;*

IV. That there be furnished sufficient guaranty, at the discretion of the Judge.

ART. 31. The procedure in accordance with the preceding article shall be carried out without hearing as respects the party against whom it is aimed and under the sole responsibility of the one that requests the same, who shall stand obligated for payment of damages and injuries to the defendant that may be occasioned thereby, whether corresponding action be not brought criminally or civilly within the fifteen days following the date on which the seizure was effected, or because the defendant shall be absolved, or the suit shall be dismissed.

In these cases order shall forthwith be given to undo the assurance to which the preceding article refers.

ART. 32. The Judge that has cognizance of the offenses of which the preceding articles speak shall decide also regarding the nullity, forfeiture, and ownership of the mark, when these are alleged in defense against the corresponding criminal action, and the respective sentence shall be notified to the Patent and Trade Mark Office.

ART. 33. In case of the commission of any of the offenses of which the preceding articles speak, in which the owner of the legally registered mark that appears improperly used or falsified does not make the respective complaint, the author of the offense or offenses shall forfeit in favor of the corresponding Federal Treasury or that of the State the articles that shall have been distinguished by the defective or illegal mark; and, in their turn, the marks and utensils to which the final paragraph of Art. 29 refers shall be destroyed.

ART. 34. When there is committed an offense or a fault of which no mention is made in this law, and the penalty for which is indicated in the Penal Code of the Federal District, as well as in all matters relative to the general rules regarding offenses and faults, degrees of crime with intent, cumulation, application of penalties, criminal and civil responsibility, provided that the present law indicates no special procedure concerning such matters, there shall be observed the rules of the said Penal Code, the provisions of which are declared obligatory throughout the Republic, when it is a matter of marks, in everything that is not modified by the present law.

ART. 35. The Courts of the Federation are authorized to

take cognizance of such controversies as arise by reason of the present law, in the following cases:

I. When it is a question of the validity or nullity of the registration of a mark, or it is claimed that the Patent and Trade Mark Office had no authority to register it or registered it without the legal requisites;

II. When there are announced as registered those marks that are not such;

III. In any other case in which the Federation shall be a party or the Federal interests are affected; and

IV. When it is a question of acts of the Patent and Trade Mark Office that are not comprised in fraction I of this article.

In the cases of which fractions I, II, and IV speak, the Judges of the District of the City of Mexico shall have jurisdiction.

In the cases of which fraction III speaks there shall be competent the District Judges with whose jurisdiction there corresponds the domicile of the defendant, if it is a matter of a civil action, or the place in which the offense was committed, if it is a matter of a criminal action.

ART. 36. In criminal and civil controversies that arise by reason of the application of this law, but in which there is affected only the interests of individuals, the Judges competent for taking cognizance thereof and deciding them shall be the corresponding Judges of Common Order, in accordance with law.

ART. 37. The provisions of the preceding articles shall not prevent the fulfillment of Art. 32 of this law, in the cases in which that proviso is applicable.

ART. 38. Any civil or criminal sentence that in any way is related with the marks with which this law is concerned, shall be communicated to the Patent and Trade Mark Office; and this Office, when in any manner the said sentence modifies rights relative to a mark, shall have it published in the *Gaceta Oficial* and shall annotate the registration of the mark the rights whereof are in question.

Notwithstanding this, order may be given to publish any other sentence relative to marks: either when any one of those interested so requests, or when the same Office deems the sentence of sufficient interest to be published.

CHAPTER III

PROCEDURE FOR OBTAINING THE REVOCATION OF ADMINISTRATIVE RESOLUTIONS

ART. 39. In cases in which those interested shall not be

satisfied with the administrative decisions of the Secretariat of Fomento or of the Patent and Trade Mark Office, they may appeal, within fifteen days after being advised of the decision, to any of the District Judges of the City of Mexico, setting forth the reasons of their dissent.

ART. 40. If—the term to which the preceding article refers having expired—they shall not have done so, the administrative decision shall stand.

ART. 41. Appeal shall be made by presenting an instrument in writing, with a simple copy thereof, which shall be verified by the Court.

The copy of the instrument shall be forwarded within twenty-four hours to the Patent Office so that it may make report within eight days.

ART. 42. As soon as the report is received, copy thereof and of the appeal shall be given for three days to the Public Ministry, in order that it may formulate its pleadings as defendant, in representation of the Secretariat of Fomento.

ART. 43. If there should be need of proofs, there shall be fixed a term that shall not exceed ten days, which expired, the trial shall be called, at latest within three days, for hearing in which the Judge shall hear the allegations of the parties, and shall decide within five days, whether the parties interested shall have appeared or not.

This judgment shall be appealable from both rulings, and appeal shall be lodged within the nonprorogable term of five days.

ART. 44. If there shall be appeal from this sentence, the files shall be forwarded forthwith to the Circuit Court that has jurisdiction, which, with only one hearing, which it shall fix, at latest, within five days, shall decide within eight days, delivering a copy of its decision, for its effects, to the Patent Office.

ART. 45. A copy of the definitive decision shall be forwarded to the authority of whose decision it is a question.

ART. 46. If the sentence shall declare the opposition of the party interested as unfounded as regards the administrative decision, there shall be imposed upon him a fine of from five to twenty pesos.

CHAPTER IV

PROCEDURE IN CIVIL ACTIONS

ART. 47. Civil actions that arise out of the present law shall be tried and decided summarily by means of the procedure that is later fixed, save the dispositions of the preceding Chapter and what is stipulated for criminal actions.

ART. 48. The term for answering the demand will be five days.

ART. 49. There shall not be admitted questions of preliminary and special consideration other than those relative to the personality of any of the litigants and the jurisdiction of the Judge.

ART. 50. Lack of legal capacity, as well as of jurisdiction, may be alleged up to three days before the time set for answering the demand.

ART. 51. The incident of legal capacity being presented, which shall be tried at the same hearing, a copy thereof shall be given to the opposing party for three days.

ART. 52. If any of the parties shall request proof, the Judge shall fix a term that in no case shall exceed ten days.

ART. 53. The proofs having been presented, the Judge shall summon the parties for an oral hearing, which shall take place within three days, to the end that they may set forth therein whatever may be in support of their rights.

ART. 54. The summons for hearing will serve as summons for the final decision, which the Judge shall render within three days, whether the parties shall have been present at the hearing or not.

ART. 55. If proof shall not have been petitioned, the Judge shall decide solely by virtue of the hearing.

ART. 56. The question of lack of jurisdiction having been raised, it shall be substantiated in accordance with the provisions of the Federal or local Codes of Civil Procedure, according to the case.

ART. 57. Peremptory exceptions may be taken on answering the suit, and they shall be decided together with the principal question.

ART. 58. Compensation and counterclaim will be admitted only when the action on which they are based shall likewise be subject to summary procedure.

ART. 59. The term for proof, as regards the principal question, shall be twenty days, extensible for an additional fifteen days, at the discretion of the Judge, and within the same there may be alleged and proven the shortcomings present in witnesses and instruments.

ART. 60. In case any of the parties impeaches a document that may be of manifest importance in the suit, there shall be followed the procedure of separate deliberation, without suspending the proceedings; however, definitive sentence shall not be pronounced in the principal suit until the said question shall have been decided by decision definitive in effect.

ART. 61. Should any of the documents be alleged as false, the Judge having jurisdiction in the procedure shall have it removed, leaving in place a certified copy, and shall forward it to the Judge of the Criminal or District Court, as may be proper, signing same together with the Clerk, or witnesses in attendance, according to the case.

If the Judge that has cognizance of the principal action exercises combined jurisdiction, he shall have the document removed, proceeding separately in the criminal action that corresponds.

ART. 62. In the first case, before making remittance to the competent Judge, and before the initiation of the criminal procedure in the second case of the same article, request shall be made of the party that has presented the document that is alleged as false, to the end that he shall state whether he desires that it be taken into consideration or not; if he insists on having it validated, the action shall be suspended in whatever stage it may be until definitive decision be taken on the question of falsity; and, if he does not insist that said document be taken into consideration, the remission of the same to the competent Judge shall be effected, or there shall take place the removal for initiating the respective criminal procedure, without suspending the course of the civil hearing.

ART. 63. There having expired the delay for proof or extension, whichever the case may be, order shall forthwith be given for the publication of the evidence, the parties being given access to the proceedings for three days, for each one, so that they may make their allegations in a hearing that shall be held, at latest, within three days.

In rulings, appeal may be lodged within the unextensible term of three days; and on sentence, within the term, likewise unextensible, of five days.

ART. 64. On conclusion of the hearing, summons shall be issued for the sentence, which shall be pronounced within the following five days.

ART. 65. Rulings and sentences that are pronounced in this class of proceedings are appealable solely to a restituitive end.

CHAPTER V

PROCEDURE IN ACTIONS OF A CRIMINAL CHARACTER

ART. 66. Criminal actions that are instituted in accordance with the present law, if they are brought before the Federal Judges in cases of their jurisdiction, shall be tried in the same manner as other criminal actions, until the Code of Federal

Procedure in Criminal Matters is issued.

ART. 67. When those same actions have to be brought before the local Judges of the Federal District, of the States or Territories, in accordance with Art. 97 of the Constitution and with the present law, the procedure shall be that in force according to the laws of each one of those localities.

ART. 68. The civil action emanating from the criminal action that this law establishes may be brought at the same time and before the same court that has cognizance of the criminal action; however, if the civil suit reaches the point of a decision before the criminal action is concluded, the civil case shall be suspended until the criminal action is found in the same stage, to the end that both may be decided in the same sentence.

ART. 69. If, through the civil suit not being yet in condition for sentence, it shall not be possible to render decision in its regard at the same time as with reference to the criminal action, the Civil Judge that the plaintiff elects shall hear and decide it in the future, unless the one that has had cognizance of the criminal case exercises combined jurisdiction.

ART. 70. Civil action may be separately lodged and prosecuted before the Tribunal that has jurisdiction:

I. When sentences shall have been definitively rendered in the criminal action, without the civil action having been brought opportunely in the criminal trial;

II. When the accused shall have died before the criminal action shall have been brought;

III. When the criminal action shall have become outlawed and the civil action is not yet outlawed.

ART. 71. When the party interested shall have brought action civilly in a criminal suit, the matter shall be tried in accordance with Arts. 47 and following.

ART. 72. If the criminal action is prosecuted before the local Courts, the civil action shall be tried in the manner provided for in the corresponding local legislation.

CHAPTER VI

COMMERCIAL NAMES AND ADVERTISEMENTS

ART. 73. The owner of a commercial name shall have the exclusive right to use it without need of registering it or of any other requisite; and, to exercise this right, he shall have, against any person that usurps or imitates it, the right of civil action to the end of having the usurpation or imitation stopped, and of demanding damages and injuries, and criminal action, to the end that the guilty party be punished.

ART. 74. Despite the proviso in the preceding article, any

merchant—whether he be national or foreign—shall have the right of having his commercial name published in the *Gaceta Oficial de Patentes y Marcas,* with the end of obtaining the prerogative that Art. 77 establishes. To conserve this prerogative it shall be necessary to renew the publication every ten years.

ART. 75. He that in any way shall use a commercial name that does not belong to him shall incur the penalty of minor detention and fine of the second class, or either, in the discretion of the Judge.

He that shall imitate a commercial name in such way that it may cause confusion shall suffer a like penalty.

ART. 76. The penalties imposed in the preceding article are without prejudice to those that are imposed for the same act when the commercial name unlawfully used is made to appear accompanying a mark and forming part thereof, provided that the use of the mark constitutes an offense in accordance with this law; since, in that case, there will be applied the rules of accumulation stipulated by the Penal Code of the Federal District.

ART. 77. To the end that the penalties that Art. 75 establishes may be imposed, it will be an indispensable requisite that the plaintiff prove that there was fraud on the part of the accused. Despite this, the merchant that shall have had his commercial name published in the *Gaceta Oficial de Patentes y Marcas,* in accordance with the proviso of Art. 74, shall be exempt from such requirement, and the legal presumption will be that the accused acted with fraudulent intent.

ART. 78. Criminal action and action for damages and injuries, to which Art. 73 refers, shall pertain likewise to a third party that shall have suffered injuries by reason of the usurpation or imitation of a commercial name.

ART. 79. Any person that, for announcing to the public a line of business, a factory, negotiation, or goods, shall make use of advertisements that through any circumstance shall have a certain originality that distinguishes them easily from among those of their kind, may acquire the exclusive right to continue using them and of preventing other persons from making use of like or similar advertisements, to such a degree that they may be confused as a whole and at first sight, this being subject, respectively, to the same requisites that the present law establishes for the registration of marks.

ART. 80. For "commercial advertisements" the effects of registration shall be for from five to ten years, at the will of the party interested, and the respective terms once ended, the "commercial advertisements" shall, *ipso facto,* become of public

domain. Before any of these terms shall terminate, the party interested shall have the right to have the effects of registration extended for another five or ten years, at the will of the petitioner, and such right may be exercised indefinitely.

These extensions shall be published in the *Gaceta Oficial de Patentes y Marcas.*

ART. 81. The owner of a "commercial advertisement," so registered, shall have the right of civil action for preventing the continuation of the use of the usurped or imitated "advertisement" and demanding damages and injuries, as well as criminal action for punishing the offender.

ART. 82. He that usurps or imitates a registered "commercial advertisement" shall incur the penalty of minor detention and fine of the first class, or either, at the discretion of the Judge; however, if the form of the advertisement coincides with that of a mark also registered, the author of the usurpation or imitation shall be punished as if it were a matter of the offense of usurpation or imitation of marks.

ART. 83. Printers, lithographers, etc., that make counterfeit "commercial advertisements" that are improperly used, and any person that sells or puts them on sale or in circulation, shall be regarded as co-authors, accomplices, etc., as shall correspond to them in accordance with their respective responsibility, qualified according to the principles and precepts established by the Penal Code of the Federal District.

ART. 84. The provisions of Chapters III, IV, and V, are applicable as far as they have to do with commercial names and advertisements.

CHAPTER VII

OFFICIAL FEES

ART. 85. There shall be charged a fee of five pesos for the registration or prolongation of a mark.

For the publication of a commercial name there shall be paid one peso.

For the registration of a "commercial advertisement" there shall be paid:

Two pesos, if it is for five years;

Four pesos, if it is for ten years;

Four pesos for each prolongation of five years.

These fees shall be paid in stamps of the Federal Stamp Revenues, in the form and in the manner that the Regulation of this law stipulates.

The Regulation will specify those that shall be occasioned for other services of the Patent and Trade Mark Office, such

as registrations of transfer, change of location, renewal of certificates of registration, etc., which likewise shall be paid in stamps of the Federal Stamp Revenues.

CHAPTER VIII

Transitory Provisions

Art. 86. This law shall commence to be effective on the first day of October of the present year.

Art. 87. Marks that shall have been registered up to the present date shall conserve all legal force and validity in accordance with the law until now in force; however, to the end that their respective owners may avail themselves of the criminal actions that this law concedes, it will be an indispensable requisite that every twenty years, counting from the date on which this law is declared operative, there be effected the renewal of the respective registrations, as is provided for in Art. 6.

Art. 88. The registrations of marks that shall have been pending due to the respective procedure being carried through and against which no opposition has been formulated, shall be subject to no further opposition, and the marks shall be registered forthwith in accordance with what the law until now in force provides.

To this effect, there shall be granted to those interested a term of two months, counting from the date on which this law commences to be of effect, to the end that they may satisfy the corresponding Government fee, subject to the collection of which —if they shall not so effect it—the files that concern such case shall be archived, and the respective applications shall be considered as if they had not been presented.

Art. 89. The procedure of marks that shall have been pending due to there having been lodged any opposition thereto, shall be prosecuted in accordance with the precepts of the law until now effective; however, once the opposition having been decided in a definitive manner in favor of the applicant, either through judicial sentence or by compromise or arrangement between the applicant and the opposer, the procedure shall be followed in accordance with the proviso of the preceding article, with the understanding that the term of two months—to which the same article refers—shall be counted in the present case from the date on which the applicant shall have been legally notified of the respective final sentence, or from the date of the compromise or arrangement.

Art. 90. The registration of marks that shall be pending only from the payment of the respective fee, shall be proceeded with in accordance with what the law in force provides, and

there shall be applicable to said registration the proviso of transitory Art. 87.

ART. 91. From the date on which this law commences to become effective, there shall no longer be applicable as to the registration of marks in the Register of Commerce the proviso in paragraph 1 of Art. 26 of the Code of Commerce; and there is fixed a term of nine months which cannot be extended, counting from the same date, so that marks that are registered in accordance with what is provided in No. III of Art. 21 of the same Code may be presented for their registration in the Patent Office, with the understanding that, if such shall not be so carried out, the registrations made in said Office will be considered as preferential as respects those effected in the Register of Commerce, even though these latter may be anterior, as respects date, to the former mentioned.

ART. 92. There are repealed Arts. 700, 701, 702, and 708 of the Penal Code of the Federal District, in so far as concerns their applicability to offenses concerning marks of which the present law speaks.

ART. 93. There is repealed the Law of November 28, 1889, and its Amendment of December 17, 1897, and any other provision that shall not be in accordance with the precepts of the present law.

Likewise there is repealed No. XVI of Art. 1 of the Law of Federal Revenues.

Therefore, I order that it be printed, published, circulated, and full effectiveness be given thereto.

MOROCCO (FRENCH ZONE)

DECREE RELATIVE TO THE PROTECTION OF INDUSTRIAL PROPERTY* OF JUNE 23, 1916

HEADING V

Marks of Manufacture and of Commerce

CHAP. I

General

Article 72. A mark of manufacture or commerce is optional.

However, ordinances of Our Grand Vizir may exceptionally declare such obligatory for products that they shall determine.

Art. 73. Names under a distinctive form, denominations, imprints, stamps, seals, vignettes, reliefs, letters, ciphers, envelopes, indications of origin, and any other signs serving to distinguish the products of a factory or an industry, an agricultural, timber, or extractive exploitation, or the objects of commerce, shall be considered marks of manufacture or commerce.

Art. 74. Regularly constituted associations or syndicates may have a collective mark of manufacture or commerce which their members shall be permitted to affix upon the products of their industry or of their agricultural, timber, or extractive exploitation, and upon the objects of their commerce.

Art. 75. The national Moroccan, French, or foreign decorations, all emblems of the same appearance, images or words contrary to public order or to good morals, may not form part of a mark nor be admitted to deposit.

Art. 76. The use of public arms, insignia, or decorations that shall not have been authorized by the competent authorities, or the employment of the official signs or stamps of control or guarantee adopted in Morocco or in any country forming part of the International Union, may be considered as contrary to public order in the sense of Art. 74.

However, marks that contain the reproduction of public arms, decorations, or insignia, with the authorization of the competent authorities, shall not be considered as contrary to public order.

A mark may not be considered as contrary to public order for the sole reason that it is not in agreement with some pro-

* Provisions not relating to trade marks are omitted.

vision of the trade mark legislation in the country of origin, save the case in which this provision itself concerns public order.

ART. 77. The nature of the product or object for which the mark is intended may in no case operate against the deposit and the validity of this mark.

ART. 78. Every mark of manufacture or of commerce regularly registered abroad in a country forming part of the International Union will be admitted to deposit and protected without variation in the French Zone of the Cherifian Empire.

However, the following may be invalidated:

1) Marks that are of a nature to infringe upon the rights acquired by third parties in the French Zone of the Cherifian Empire;

2) Marks destitute of any distinctive character, or composed exclusively of signs or indications capable of serving in commerce to designate the kind, quality, quantity, destination, value, place of origin of the products, or the time of production, or become common in current language, or in the ordinary and usual customs of trade in the French Zone of the Cherifian Empire. In the estimation of the distinctive character of a mark, account shall be taken of all circumstances of fact, particularly of the duration of use of the mark;

3) Marks that are contrary to morals or to public order.

ART. 79. The country in which the depositor has his principal establishment shall be considered the country of origin.

If this principal establishment is not situated in one of the countries of the International Union, that to which the depositor belongs shall be considered as the country of origin.

CHAP. II

Deposit. Priority of Use. Term. Formalities. Fees

ART. 80. No one may claim the exclusive ownership of a mark unless he has effected the deposit with the Moroccan Office of Industrial Property according to the conditions determined by the following articles.

ART. 81. In default of the deposit of a mark, the priority of use of this mark may be established only by literal proof, that is to say, by printed matter or contemporary documents concerning the facts of use that they tend to establish.

ART. 82. When a regularly deposited distinctive sign has been employed publicly and continuously in Morocco or abroad for at least five years without any recognized action resulting, the exclusive ownership of this sign may no longer be contested, by right of priority of use, against the first depositor, unless it is established that at the time of the deposit the de-

positor could not be ignorant of the mark of the first user.

A third party that proves, in accordance with the conditions indicated in the present article, the prior and continuous use, as a mark, of the distinctive sign so deposited, may continue this use for ten years, counting from the notification to be made to him of the deposit by the depositor. This right of use may be transferred along with the capital of the business.

He is authorized, in order to safeguard this possession, to bring action, should there be occasion, for unfair or illegal competition.

ART. 83. The deposit shall be effective for twenty years only.

The ownership of the mark may always be preserved for a new term of twenty years by virtue of a new deposit, which may be renewable indefinitely.

In case of assignment of the establishment or even simply of the mark, with or without its goodwill, the transfer of the mark must be effected according to the terms that shall be determined by the regulatory order provided for by Art. 84 of the present *Dahir*. This transfer may be renewed for a term of twenty years.

ART. 84. In default of the effective use of the mark in Morocco or abroad, and when the author of the deposit does not justify the reasons of non-use, the avoidance of the deposit may be pronounced at the request of the Public Minister or of any party interested.

ART. 85. The deposit comprises:

1) An application addressed to the Resident Commissioner General of France in Morocco (Direction of Agriculture and Commerce, Service of Economic Studies);

2) Two facsimiles of the design of the mark;

3) The *cliché* of this mark;

4) For marks already registered abroad and which are the subject matter of Art. 78, above, a regular certificate of registration in the country of origin delivered by the competent authority.

ART. 86. The deposit and transfer of marks shall be made for each class of products or objects for which the said marks are intended, on payment of the fees destined to satisfy the expenses occasioned by the application of the present *Dahir*.

The regulatory order provided for by Art. 87, following, shall determine the amount and the conditions of payment of these fees that are to be collected by the Office of the Secretary of the Moroccan Office of Industrial Property for the service of the said Office.

ART. 87. An order of Our Grand Vizir shall determine the measures necessary for the execution of the present *Dahir* and particularly: the formalities to be fulfilled for the deposit, transfer, and publicity of marks of manufacture and commerce; the conditions concerning the delivery to those interested of the deed proving the deposit effected by them; the procedure to be followed for the rejection of applications for the deposit of illegal marks that shall be pronounced by residential order; the amount of the fees appertaining to the deposit and transfer of marks, their mode of collection and the conditions of delivery to the depositors of the receipts for payments.

HEADING VI

COMMERCIAL NAMES

ART. 88. Commercial names shall be protected, whether they form part of a mark of manufacture or of commerce or not.

Furthermore, the provisions of Our *Dahir* constituting the Code of Commerce, as concerns the inscription in the Register of Commerce of names and firms relating either to individuals or to commercial associations, is in no wise derogated.

HEADING VII

UNFAIR TRADE

ART. 89. Unfair trade consists in:

1) Infractions of the provisions of the present *Dahir,* when the acts alleged are lacking in one of the elements susceptible of subjecting them to the penalties that are the subject of Heading X, following;

2) Acts comprised in Art. 84 of Our *Dahir* constituting the Code of Obligations and Contracts.

ART. 90. This enumeration is not limitative, and the courts shall have peremptory jurisdiction over facts that shall be brought before them as susceptible of constituting unfair trade.

The principles presented in Arts. 77 to 106 of Our *Dahir* constituting the Code of Obligations and Contracts are in no wise derogated.

ART. 91. Acts of unfair trade may only result in an action for cessation from the acts that constitute it and indemnity.

HEADING VIII

PROTECTION IN EXPOSITIONS AND INDUSTRIAL RECOMPENSES

CHAP. I

Temporary Protection. Object and Extent

ART. 92. A temporary protection shall be granted . . . to

marks of manufacture or of commerce, for products that shall be regularly entered in official or officially recognized foreign international expositions.

ART. 93. This protection, whose duration is fixed at twelve months, counting from the official opening of the exposition, will have the effect of maintaining for exhibitors or their assigns, subject to the following conditions, the right to claim during this term the protection of which their . . . marks may legally be susceptible.

ART. 94. The duration of the temporary protection shall not be extended, nor that of the delays provided for by Art. 4 of the International Convention of Paris of March 20, 1883, revised at Brussels on December 14, 1900, and at Washington on June 2, 1911, nor of those fixed by Arts. 12 and following of the present *Dahir*.

ART. 95. Exhibitors that shall desire to avail themselves of the temporary protection shall have delivered to themselves, by the authority charged with officially representing Morocco at the exposition, a certificate of guarantee which shall show that the object for which protection is applied for is really exhibited.

The application for the said certificate shall be made during the course of the exposition and, at latest, within the first three months from the opening of the exposition; it shall be accompanied by an exact description of the object to be guaranteed, and, should there be required, of the drawings of said object.

Applications shall be entered in a special Register which shall be forwarded along with the said applications and the accompanying papers to the Resident Commissioner General of France in Morocco (Direction of Agriculture and Commerce, Service of Economic Studies), immediately on the official closing of the exposition, and communicated without expense on request under the supervision of the Moroccan Office of Industrial Property.

ART. 96. An order of Our Grand Vizir will determine, on the occasion of each exposition presenting the characteristics noted in Art. 92, the measures necessary for the application of the preceding article.

ART. 97. The same protection shall be granted to . . . marks of manufacture and of commerce for products that shall be regularly entered at expositions organized in Morocco with the authorization of the Administration or under its patronage.

ART. 98. An order of Our Grand Vizir will determine the measures necessary for the application of the preceding article.

CHAP. II

Industrial Recompenses. Use and Guarantee

ART. 99. Recompenses, the subject of the present chapter, comprise prizes, medals, mentions, deeds or attestations of whatever nature concerning superiority or approval that has been:

1) Obtained in expositions or organized competitions, patronized or authorized by the Government of Our Cherifian Empire;

2) Obtained abroad in expositions or organized competitions patronized or organized by a foreign Government;

3) Awarded in Morocco by established bodies, public establishments, Moroccan or foreign associations or societies.

Industrial or commercial use of these recompenses may be made only upon and after the fulfillment of the formalities hereinafter prescribed.

ART. 100. The industrial or commercial use of the recompenses enumerated in Art. 99 is allowable only after registration at the Moroccan Office of Industrial Property of the official list of awards, either at the request of the authority that has organized the exposition or the competition, or of the holder of one of these recompenses included in the said list, or of the diploma, certificate or their certified copies corresponding to the petition of the holder interested.

The registration allows of inscription by the Moroccan Office on the diploma, certificate, or their copies, of the date of the deposit and of a serial number. Mention of the registration is entered in a special Register.

Every application for the registration of a list of awards must be accompanied by two facsimiles of these awards; one of them shall be returned to the authority that has organized the exposition or the competition, or to the party interested, provided with the mentions specified in the preceding paragraph; the other shall be preserved in the archives of the Moroccan Office.

Registration is legal as to recompenses awarded in expositions or competitions organized, patronized, or authorized by Our Government or by a foreign Government.

In any other case the registration shall be effected only after investigation by the Moroccan Office.

Registered recompenses shall be published in the *Bulletin Officiel* of the Protectorate.

Diplomatic conventions concluded with countries that have instituted a procedure for registration may excuse recompenses obtained and previously registered in these countries from regis-

tration in Morocco on condition that the same dispensation from registration be accorded to the holders of recompenses awarded and registered in Morocco, and that there be an exchange of documents in evidence of the registration.

ART. 101. Recompenses, the subject of the present chapter, shall be awarded by personal or individual title or by collective title.

When the recompense has been awarded by personal or individual title, industrial or commercial use may be made thereof, either by the group interested or by each of the members of this group, on condition of expressly mentioning, and in characters as legible as those of the recompense itself, the collectivity that has obtained it.

Industrial or commercial use may be made of a recompense attributed to an industrial or commercial enterprise only by the proprietor of this enterprise or by his assigns.

Industrial or commercial use may be made of a recompense attributed by title of collaborator only on condition, by the holder, of indicating that it is a collaborator's recompense, and of mentioning the name of the enterprise with which he was affiliated when he obtained it. The proprietor of the enterprise may likewise make use thereof only on condition of indicating that it is a matter of a collaborator's recompense.

When a recompense has been awarded in view of a determined product, the industrial or commercial use thereof may be assigned at the same time as the product.

Every assignment or transfer of commercial capital or of a product including the recompenses attributed to the prior owners must be declared at the Moroccan Office of Industrial Property; in default of this declaration, the successor may not make legal use of the recompenses attributed to his predecessor or predecessors and regularly registered.

ART. 102. The industrial or commercial use of a recompense carries the obligation of indicating the nature of the recompense, the title, either of the exposition or competition at which it was obtained, or of the established body, public establishment, association or society, that has awarded it, and the date on which it was granted.

The simple mention, in continuation of the statement of a recompense, of the name of a city, régime or country, and the date of the exposition or competition, is reserved exclusively for expositions or competitions organized, patronized or authorized by the Government of Our Cherifian Empire or by a foreign Government.

ART. 103. The Registers in which mention is made of the

registration of lists of awards, diplomas or certificates, and declarations of assignment or transfer of commercial capital or of products, shall be open freely to the public, as well as, the case occurring, the titles deposited.

Any interested party has the right to have delivered to himself a list of said registrations and of said declarations and a copy of the titles deposited.

ART. 104. An order of Our Grand Vizir will determine the formalities and conditions of the registration of lists of awards, diplomas and certificates, declarations of assignment or of transfer of commercial capital or of a product, provided for in Art. 101, of the delivery of the lists and copies noted in paragraph 2 of Art. 103, as well as all measures necessary for the application of the provisions contained in the present chapter.

It shall, in addition, fix the fees to be collected by the Moroccan Office of Industrial Property for the service of this Office, by reason of the registration of lists of awards, diplomas and certificates, the declarations noted in Art. 101, and the delivery of the lists or copies provided for in Art. 103. The Public Administrations shall be exempt from the payment of the said fees.

ART. 105. The provisions of the present chapter shall be applicable to recompenses attributed prior to the coming into effect of the present *Dahir*, but no registration shall be imposed on holders or their assigns for the recompenses noted in paragraphs numbered 1 and 2 of Art. 99. The Administrations interested are alone bound to have the lists of awards of said recompenses registered at the Moroccan Office of Industrial Property.

As concerns the recompenses noted in paragraph numbered 3 of Art. 99, the holders or their assigns shall not be obliged to proceed to the registration of diplomas or certificates; however, in case of assignment or of transmission of capital effected subsequent to the coming into effect of the present *Dahir*, the parties interested that shall wish to make an industrial or commercial use of the said recompenses shall have them registered in conformity with the provisions of Art. 100, and effect the declaration provided for in the final paragraph of Art. 101.

HEADING IX

CONCERNING THE MOROCCAN OFFICE AND THE INDUSTRIAL PROPERTY REGISTERS

ART. 106. The Moroccan Office of Industrial Property, instituted by Art. 9 of the present *Dahir*, shall be located at Rabat, and shall be devoted to the service of economic studies and in-

formation, attached to the Direction of Agriculture, Commerce, and Colonization of the Cherifian Empire, by *Dahir* of August 28, 1915 (*Bulletin Officiel,* No. 149, of August 30, 1915).

ART. 107. The office shall comprise:

1) A section directly open to the public;

. . . . . .

3) And a section of designs and models, marks of manufacture and of commerce, and industrial recompenses.

It shall keep the registers of industrial property necessary for the execution of the present *Dahir.*

It shall assure the publicity provided for in the present *Dahir* in the *Bulletin Officiel* of the Protectorate.

ART. 108. The section directly open to the public shall be charged with:

. . . . . .

4) Communications of . . . marks of manufacture and of commerce, certificates of guarantee in expositions and industrial recompenses;

5) The service of research and the special funds of the Office.

. . . . . .

ART. 110. The section of designs and models, marks of manufacture and of commerce, expositions and industrial recompenses shall have as prerogatives:

1) The study of questions relative to the application of the laws concerning . . . marks of manufacture and of commerce, and industrial recompenses;

2) The relations with the International Bureau at Berne for the international registration of marks of manufacture and of commerce;

3) The keeping of the registers of industrial property and the preparation of the part of the *Bulletin Officiel* relative to its attributes.

ART. 111. The Chief of the Service of Economic Studies and Information shall provide for the direction of the Moroccan Office of Industrial Property.

ART. 112. The said Chief of the service shall be assisted by a Technical Commission named for four years by residential order.

It shall comprise:

The Director of Commerce and Agriculture, President;

The Chief of the Service of Economic Studies;

The Chief of the Service of Legislative Studies;

A professor occupying a chair concerned with industrial and commercial legislation;

A jurist;

A member of each of the Chambers of Commerce of the French Zone of the Cherifian Empire; and

Two well known natives of the country.

The Commission shall make use of a Secretary chosen from among the personnel of the Office.

ART. 113. It shall be consulted:

1) Upon questions relative to the procedure of the Office; it shall give its advice on these questions;

2) On the days and hours of the opening to the public of the offices of consultation for . . . marks of manufacture and of commerce, and industrial recompenses;

3) On the method of publication of . . . certificates of . . . marks and recompenses, and with regard to the charges to be made for the copies placed on sale;

4) And on all questions that shall be submitted to it by the Office.

It shall prepare annually, during the month of October, a report concerning the operation of the Office, to be submitted to the Resident Commissioner General.

It shall meet at the call of its President.

ART. 114. Orders of Our Grand Vizir shall determine:

1) The number, form, and constitution of the Registers of industrial property;

2) The mode and conditions as to the printing of . . . certificates, as well as of publications in the *Bulletin Officiel* of the Protectorate;

3) The regulation of the details necessary for the execution of the provisions concerning the operation of the Office.

HEADING X

INFRACTIONS AND PENALTIES. PROCEDURE AND COMPETENCE

CHAP. I

Infractions and Penalties

. . . . . .

SEC. III

Marks of Manufacture and of Commerce

ART. 120. A fine of from 50 to 3,000 francs and imprisonment of from three months to three years, or either of these two penalties, shall be inflicted on those:

1) That knowingly have counterfeited a mark or made use

of a mark without the authorization of the party interested, even with the addition of the words *"façon, recette, imitation, imité, genre, etc.,"* or any other indication adapted to deceive the buyer;

2) That have fraudulently affixed upon their products or the objects of their trade a mark belonging to others;

3) That have knowingly sold or placed on sale one or several products bearing a counterfeit or fraudulently affixed mark;

4) That have delivered a product other than the one that was demanded from them under a deposited mark.

ART. 121. They shall be punished with a fine of from 50 to 2,000 francs and imprisonment for from one month to one year, or only one of these two penalties:

1) That, without counterfeiting a mark, have made a fraudulent imitation thereof of a nature to deceive the buyer, or have made use of a mark fraudulently imitated;

2) That have made use of a mark bearing features adapted to deceive the buyer as to the nature of the product;

3) That have knowingly sold or placed on sale one or several products bearing a fraudulently imitated mark or bearing indications adapted to deceive the buyer as to the nature of the product.

ART. 122. They shall be punished with a fine of from 50 to 1,000 francs and imprisonment of from fifteen days to six months, or either of these two penalties:

1) That have not affixed upon their products a mark declared obligatory;

2) That have sold or placed on sale one or several products not bearing the mark declared obligatory for this class of products;

3) That have contravened the provisions of the decrees rendered in execution of Art. 1 of the present law;

4) That have caused the signs prohibited by paragraph 5 of Art. 1 to figure in their marks, deposited or not.

ART. 123. The penalties prescribed in Arts. 7, 8 and 9 may be doubled in case of repetition of the offense. There is repetition when, during the five years preceding, a condemnation for one of the crimes provided for by the present law has been pronounced against the accused.

SEC. IV

Commercial Names

ART. 124. Any usurpation or any fraudulent use of a commercial name shall be punished with the same penalties as those provided for in Art. 120, preceding (trade marks).

Sec. V

Industrial Recompenses

Art. 125. Punishment by a fine of from 50 to 6,000 francs and imprisonment for from three months to two years, or only one of these two penalties, shall be pronounced against:

1) Those that, without right and fraudulently, shall have attributed to themselves the recompenses mentioned in the present law, or shall have attributed to themselves imaginary recompenses, by apposition on their products, signs, announcements, prospectuses, letters, commercial papers, containers, or on any other matter;

2) Those that, under the same conditions, shall have affixed them to objects other than those for which they have been obtained;

3) Those that, under the same conditions, shall have availed themselves thereof with juries of expositions or competitions;

4) Those that, by any artifice whatsoever, captious mention or figurative sign, reproducing more or less exactly the conventional aspect of a medal, shall have attempted to induce the public to believe that they have obtained a recompense that, in fact, has not been attributed to them;

5) Those that shall have made industrial or commercial use of recompenses other than those provided for in Art. 1 of the present law;

6) Those that shall have availed themselves unduly on the occasion of an exposition or of a competition, in circulars, prospectuses, posters, diplomas, certificates, lists of awards, or in any other manner, of the authorization or of the patronage of a Minister or any other authority or public administration without having previously obtained it, or that shall have had appear on their documents titles, devices, vignettes, arms, armorial bearings, or any other signs or mentions of a nature to induce to a belief as regards this authorization or this patronage.

Art. 126. Punishment by a fine of from 50 to 3,000 francs shall be inflicted on:

1) Those that shall have made industrial or commercial use of a recompense without fulfilling the conditions prescribed by Arts. 2, 3, and 4;

2) Those that shall have presented to the magistrates or functionaries qualified to this effect a diploma or certificate relative to a recompense, as provided for in Art. 4 of the present law, for having the signatures thereof legalized, without having justified the prior registration at the National Office of Industrial Property of either the diploma or certificate or the list of awards mentioning the said recompense.

SEC. VI

Other Infractions

ART. 127. All infractions relating to the provisions of the present *Dahir*—other than those provided for in the five preceding sections of the present chapter and aside from acts of unfair trade that give occasion only to damages and injuries—shall be punished in accordance with the same penalties as those included in Art. 125.

SEC. VII

Accessory Penalties and General Provisions
(Art. 463 of the Penal Code)

ART. 128. Confiscation to the profit of the injured party, of the objects or products injuring the rights guaranteed by the present *Dahir,* as well as the instruments and utensils that have served or been intended for their manufacture, shall be pronounced by the court, even in case of acquittal.

ART. 129. The court shall order the destruction, in every case, of the marks, mentions, indications, effigies, or representations recognized as contrary to the dispositions of the present *Dahir.*

In whatever concerns obligatory marks, the tribunal shall prescribe that they be affixed to the products that are subject thereto, and it shall be empowered to pronounce the confiscation of the products if the accused has incurred, during the five years preceding, a condemnation for any of the crimes provided for by the first two paragraphs of Art. 120.

ART. 130. Those found guilty may, furthermore, be deprived of the right of becoming members of chambers of commerce, local or central committees of economic studies, any consulting chamber, or any elective assembly possible of being substituted for these organizations. The term of this interdiction shall last not longer than ten years.

The court may order the posting of the judgment in places that it shall determine, and its insertion in whole or in excerpt in journals that it shall designate, all this at the expense of the guilty party.

ART. 131. Art. 463 of the Penal Code shall be applicable to crimes denounced and punished by the present law.

ART. 132. Damages may be adjudged to the injured parties by the court having jurisdiction, even in case of acquittal from the penal point of view.

CHAP. II

Procedure and Competence

ART. 133. Any party injured may, by virtue of an order

of the President of the Tribunal of First Instance in the jurisdiction wherein the procedure must be effected, proceed to detailed designation and description, with or without confiscation, of the objects and products, instruments and utensils.

ART. 134. The order shall be granted on simple request and on presentation of the title invoked by the petitioner; it shall contain the designation of the Secretariat of the Tribunal of First Instance or of the Tribunal of Peace charged with the procedure and, should occasion arise, the name of an expert to aid the agent of the Secretariat in his description.

ART. 135. When there is occasion for confiscation, the said order may impose a bond on the petitioner which he is required to furnish before proceeding thereto.

The bond shall always be imposed on foreigners. French citizens shall not be considered as foreigners.

ART. 136. Proofs and confiscations shall be made in conformity with the prescriptions of Arts. 217 and 218, and 309 to 314, of Our *Dahir* concerning Civil Procedure.

With the custodian there shall be left a copy of:

1) The petition and of the order authorizing the procedure;

2) The deed evidencing the deposit of the bond, if there be such; and

3) The objects described or seized, all this on pain of invalidity.

ART. 137. In the case provided for by No. 4 of Art. 120 (delivery of a product other than the one that has been applied for under a deposited mark), the agent of the Secretariat is not required to show the order until after the delivery of the product other than the one for which request was made, and, if the order authorizes several proofs of substitution, only after the last delivery.

ART. 138. In default by the petitioner of bringing suit either civilly or criminally within a term of fifteen days—in addition to one day for each five myriametres (50,000 metres) of distance between the place at which the objects described or seized are found and the domicile of the party to be prosecuted, or of his special representative—the description or seizure shall be of no legal effect, without prejudice to damages.

ART. 139. Public action may be brought by the Public Minister only on complaint of the injured party.

Summons delivered in civil cases shall take the place of a complaint.

The prosecution once begun, the withdrawal of the private party remains without effect on the action.

ART. 140. Civil or criminal action shall be lodged before

the Tribunals of First Instance of the domicile of the party prosecuted or that of his special representative, and, on default (of domicile), before the Tribunal of First Instance of the place at which the objects or products complained of have been found.

The Tribunals shall rule on all exceptions that shall be raised either as to the nullity or expiry of the title invoked or any other question relative to the ownership or use of the said title.

ART. 141. In case there should result a modification as to the deposits, declarations, and inscriptions provided for by the present *Dahir*, mention of this modification in the Registers of the Moroccan Office of Industrial Property shall be ordered by a special decree of the judgment or the order evidencing this modification. For this purpose, an extract from the judgment or from the order in definitive form shall be forwarded to the Moroccan Office of Industrial Property under the supervision of the Secretariat of the Archives of the Tribunal or of the Court.

The expenses of the extract to be forwarded, as well as the mention ordered, shall be added as accessories to the costs of the case, and borne by the party that shall have been condemned to the said costs.

HEADING XI

THE COMING INTO FORCE OF THE DAHIR

ART. 142. The present *Dahir* shall become of effect on January 1, 1917.*

* According to an Official Communication the entry into force of this *Dahir* was deferred until March 1, 1917.

THE NETHERLANDS

LAW OF SEPTEMBER 30, 1893, AS AMENDED DECEMBER 30, 1904

SECTION I—BUREAU OF INDUSTRIAL PROPERTY AND BRANCH OFFICES

ARTICLE 1. There shall be created a Bureau of Industrial Property for the Kingdom in Europe and its colonies and possessions in other parts of the world. This Bureau shall serve at the same time as the central depository, as provided for in Art. 12 of the International Convention for the Protection of Industrial Property concluded at Paris on the twentieth day of March, 1883, and adhered to by the Law of April 23, 1884 (*Staatsblad* [*Official Gazette*], No. 53).

This Bureau shall be under the administration of the Minister of Agriculture, Industry and Commerce and shall be located at The Hague. The direction of the Bureau shall be controlled by the ordinary administrative rules.

The sums collected by the Bureau, in pursuance of the present law or in pursuance of the Arrangement Relative to the International Registration of Marks of Manufacture and of Commerce agreed to at Madrid on the fourteenth day of April, 1891, and adhered to by the Law of December 12, 1892 (*Staatsblad,* No. 270), as such Arrangement has been amended by the additional Act signed at Brussels on the fourteenth day of December, 1900, and ratified by the Law of June 7, 1902 (*Staatsblad,* No. 85), shall be delivered to the Treasury of the Kingdom, so far as they shall not have been transmitted to the Bureau of the Union for the Protection of Industrial Property at Berne. The Director, upon whom rests the responsibility for these sums, shall be subject to the common administrative rules.

ART. 2. Through ordinary measures there shall be created subsidiary Bureaux of Industrial Property, which shall serve at the same time as branch depositories and which shall be charged with making known to the public the marks of manufacture and of commerce of the colonies and possessions in other parts of the world; the other functions of these subsidiary Bureaux shall be determined at the same time with those functions of the Bureau of Industrial Property connected therewith and mentioned in the first paragraph of Art. 1.

SECTION II—REGISTRATION, INTERNATIONAL REGISTRATION, RENEWALS AND EXPIRATIONS OF TRADE MARKS

ART. 3. The right to the exclusive use of a mark for dis-

tinguishing the products of industry or of commerce of one person from those of others, pertains to him that, in the Kingdom in Europe or in the colonies or possessions in other parts of the world, shall have first made use of the mark for the purpose indicated, but only as regards the kind of goods for which the mark shall have been employed and during a term of not to exceed three years from the last use that shall have been made thereof.

Save in case of proof to the contrary and reserving those provisions contained in the following paragraph, the person that first fulfills the formalities provided for in Art. 4 shall be considered as having been the first to make use of a registered mark.

Any person that shall have filed a trade mark with the Bureau of Industrial Property within a term of four months after he shall have filed a regular application for the said mark in one of the States that have become parties to the International Convention at Paris shall be considered, according to Art. 6 of this Convention, as having made use of that mark in the Kingdom in Europe since the beginning of the said term.

Any person that, within six months after the opening of an official or officially recognized international exposition held in the territory of one of the States that have become parties to the aforesaid International Convention of Paris, shall file with the Bureau of Industrial Property a mark under which the objects of his trade or industry were exhibited at this exposition, in order to have it registered, according to Art. 4, for the same kind of products, shall be considered as having made use of the said mark in the Kingdom in Europe from the day when it appeared at the exposition as the distinctive sign of his products of the same nature. The Bureau of Industrial Property may require as proof of the day on which the mark has thus appeared at the exposition the production of a declaration certified by the direction of the exposition or by some competent person or authority recognized by this Bureau.

ART. 3BIS. Registration may be obtained for a mark in the name of several persons only when such persons have all jointly a right to the factory or to the establishment of commerce the products whereof are to be distinguished by such mark.

The Bureau of Industrial Property may demand as proof of this fact that a certified extract of the act establishing the collective right in question be filed.

ART. 4. In order to obtain the registration of a mark, the interested party shall file with the Bureau of Industrial Property a suitable *cliché* (electrotype) of not less than 1.5 centime-

tres nor more than 10 centimetres in length and width, and of 2.4 centimetres in height, together with two signed specimens of a distinct copy of the mark, and with a corresponding and exact description of the latter. In this description there should be specified all of the goods of that class for which the mark is intended, and applicant's full name and domicile. If a color is specified in the description as constituting an essential feature of the mark, applicant should place at the disposal of the Bureau of Industrial Property colored specimens of such mark, the number of which shall be fixed by the Bureau.

A trade mark may also be filed by a person empowered by written authority.

A trade mark shall not contain any words or representations that are contrary to good morals, or by means of which the use of a mark may affect public order. Neither shall a mark contain the arms of the Kingdom, even with slight alterations, nor those of a province, commune, or any other public corporation.

On the filing of a trade mark there must be paid thirty guilders for each mark; this sum will in no case be returned.

ART. 5. Except as provided for in Art. 9, a mark filed in conformity with the provisions of the preceding article shall, within eight days from the date of its receipt, be entered by the Bureau of Industrial Property in the Public Register destined for this purpose; the form of which Register shall be determined by the Minister empowered with the carrying out of this law.

The two filed copies of the mark and the description shall be certified to and the date and number of the entry in the Register shall be added thereto.

One of these copies shall be returned to the applicant within the three following days.

In the case provided for in the second paragraph of Art. 4 the power shall be attached to the other copy.

ART. 6. Under the direction of the Bureau of Industrial Property there shall be published the descriptions filed as provided for in Art. 4, along with an impression of the *cliché*, of marks inscribed since the last succeeding publication, with also a description of the class of goods for which they are intended and of the address of the applicant.

These aforesaid announcements shall be placed in special supplements of the journal, which shall be separably obtainable by any person.

The *clichés* shall be returned to those trade mark owners that shall so request.

ART. 7. A subject of The Netherlands or a foreigner residing in the Kingdom in Europe or possessing there an industrial or commercial establishment of serious nature and serving effectively for the exploitation of an industry or of a line of business, who wishes also to assure in the other States that have become parties to the Convention of Madrid—mentioned above—the protection of a mark deposited by him in conformity with Art. 4, for the same kind of goods, shall transmit to the Bureau of Industrial Property three additional specimens of a distinct copy of the mark, one of which must be signed; a declaration in French, signed by himself, of the kind of goods upon which the trade mark is to be affixed; and a *cliché* prepared in accordance with the requirements of Art. 4. If the color of the mark constitutes an essential feature of the latter, the applicant shall mention this fact in a detailed description of the trade mark, signed by himself and annexed to the filing papers, and he shall place at the disposal of the Bureau of Industrial Property colored specimens of such mark, the number of which will be fixed by the Bureau.

The second paragraph of Art. 4 shall be applicable to this case.

The said Bureau shall preserve the signed specimen copy after having certified it; then, if the trade mark is registered in accordance with the requirements of Art. 5, or immediately after such registration, this Bureau shall proceed, in conformity with established rules, to apply for registration in the International Bureau at Berne, and it shall notify the applicant of all communications relative to his mark that it may receive from the International Bureau, and in which the said applicant is liable to be interested.

If a trade mark, filed in accordance with the requirements of Art. 4, is not registered as provided for by Art. 5, then the Bureau of Industrial Property shall inform the applicant that his application for registration with the International Bureau at Berne cannot be effected for the present.

When the filing is effected, the sum of sixty guilders must be paid for one trade mark, and the sum of thirty guilders for every additional trade mark filed simultaneously with the first one by the same owner or in his name. The sums paid in this manner will in no case be returned.

ART. 8. Within eight days after receipt of the notification from the International Bureau at Berne, provided for in Art. 3 of the aforementioned revised Arrangement of Madrid, the Bureau of Industrial Property shall enter—except in those cases provided for in Art. 9—the trade mark referred to in said noti-

fication in the public Register destined for this purpose, the form of which Register shall be determined by the Minister.

This notification shall be certified to on receipt, and the date and number of the entry in the Register shall be added thereto.

If a trade mark registered under international arrangements has been filed in the Bureau of Industrial Property in compliance with the requirements prescribed by Art. 7, this Bureau shall notify the applicant as soon as possible of such international registration, and it shall deliver to him a duly dated certificate showing that the registration specified in the first paragraph of this article has been effected.

All persons shall have the right to procure the supplement to the journal of the International Bureau at Berne in which are published all trade marks registered under international arrangements.

The fact that said publication is placed at the disposal of the public, as provided for in Art. 6, shall be announced each time in the publication mentioned.

ART. 9. If a trade mark filed in accordance with Art. 4, or if a foreign trade mark of that kind specified in Art. 8, is entirely, or in its essential features, identical with a trade mark registered in the name of another person for goods of the same description, or if it is not in accordance with the provisions contained in the last but one paragraph of Art. 4, then the Bureau of Industrial Property may refuse registration; in this case the Bureau shall notify the applicant in writing of this fact with statement of reasons, within eight days after the filing of the trade mark, or it shall notify the International Bureau at Berne within eight days after the receipt of the notification specified in Art. 8.

The applicant referred to in Art. 4, or the one who files a trade mark of that kind specified in Art. 8, may address to the District Court at The Hague a petition signed either by himself or by his attorney in order to have the registration effected. Such petition shall be presented within one month after the above mentioned notification in case of applications for trade marks of that kind specified in Art. 4, and within six months after said notification in case of applications for those trade marks specified in Art. 8.

ART. 10. If a trade mark registered in accordance with Art. 5, or a foreign trade mark registered in accordance with Art. 8, is either entirely or in its essential features identical with a trade mark for the same class of goods to which some other person has a right by virtue of Art. 3, or if it contains a

name or firm to which some other party has a right, then that party who claims such right may, without prejudice to other legal remedies which are at his disposal, address to the District Court at The Hague a petition, signed either by himself or by his attorney, to the end of having the registration declared void. This petition shall be presented, in case of a trade mark registered in accordance with Art. 5, within six months after the publication prescribed by Art. 6, and, in case of a foreign trade mark registered according to Art. 8, within nine months after the announcement prescribed at the end of said article.

The interested party referred to in the first paragraph may, also after the expiration of the term indicated therein, demand in the same manner that a registration be declared void, if his right results from a judicial decision.

If a trade mark is not in conformity with the provisions of the last paragraph but one of Art. 4, the public prosecutor may, during the term fixed in the first paragraph, demand that the Court named in the first paragraph should declare the registration to be void.

ART. 11. Within three days the recorder of the court shall notify the Bureau of Industrial Property in writing of every petition provided for in Arts. 9 and 10 and of every demand made by the public prosecutor in accordance with Art. 10.

ART. 12. The Tribunal shall decide in the Chamber of Council.

No decision shall be rendered on a petition filed pursuant to Art. 9 unless the petitioner and the Director of the Bureau have been given, respectively, an opportunity to assert verbally before the Tribunal, on the one hand, the right to register a trade mark and to urge, on the other hand, those reasons that justify a refusal of registration. The petition and the fact that the Tribunal has taken such petition into consideration merely by means of replying to it in order to appoint a day for the hearing, shall be notified by the petitioner to the Director within fourteen days after the issue of the orders of the Tribunal.

No decision shall be rendered on a petition or a demand presented in pursuance of Art. 10 until the party by whom a trade mark is filed has been heard or duly summoned on that date fixed by the Tribunal when taking the petition of the demand merely into consideration. The recorder shall notify the Bureau of Industrial Property of said date in writing; and if there be in question a trade mark registered in accordance with Art. 5, the party who has filed such trade mark shall be informed by a notification, issued by the petitioner or the public prosecutor, of the petition or demand and of the fact that it has been

taken into consideration; said notification to be issued within fourteen days after the signing of the paper showing that a petition or a request has been taken into consideration.

If there be in question a trade mark registered in accordance with Art. 8, then the Bureau of Industrial Property shall notify the International Bureau at Berne of the petition or the demand, and it shall also inform the latter, with the least possible delay, of the date fixed by the Tribunal for a hearing; such information to be furnished, at least, one month or three months in advance, according as the party who has filed a trade mark resides in Europe or in some other part of the world.

At the hearing the petitioner or, in that case provided for in the second paragraph of Art. 10, the public prosecutor may argue by word of mouth the reasons that serve as a basis for the petition or the demand.

Before the hearing, prescribed in this article, is closed, the judge shall fix the day on which he intends to give his decision.

ART. 12BIS. Within one month after the date of a decision handed down by the Tribunal, an appeal may be taken to the Court at The Hague which shall pass judgment in the Chamber of Council.

If the appeal refers to a trade mark the registration of which has been refused by the Bureau of Industrial Property, then the provisions contained in the second paragraph of Art. 12 and relating to the first instance shall be applicable on appeal in such manner that the prescribed notification shall emanate from the Director if the appeal has been interposed by the latter.

If the appeal refers to a case where a petition or a demand is presented to the effect that the registration of a trade mark be annulled, then the provisions contained in the third paragraph of Art. 12 and relating to the first instance shall be applicable on appeal in such a manner that the summons and the notification will be addressed to the original petitioner in care of the depositor of the mark, provided that he is the one that has lodged the appeal.

The requirements contained in the fourth, fifth and sixth paragraphs of Art. 12, relating to a demand or petition referring to the declaration of nullity of a mark or to a hearing before the Tribunal, are applicable to the appeal and to the hearing before the Court in such a manner that the right granted to the public prosecutor by the fifth paragraph belongs, on appeal, to the Attorney General before the Court.

ART. 13. Within one month from the date of the decision of the Court, an appeal in cassation may be lodged.

If there be in question a trade mark filed in accordance with Art. 4, or registered according to Art. 5, the petition referring thereto shall be made known to the interested opposing party.

If this appeal is lodged with a view to obtaining an order for the registration of a trade mark, the Bureau of Industrial Property shall be considered as the interested opposing party.

The Recorder of the High Court of Justice shall notify the Bureau of Industrial Property, within three days, of every appeal in cassation that is not lodged by said Bureau.

If the appeal in cassation relates to a trade mark of the kind referred to in Art. 8, the Bureau of Industrial Property shall notify the International Bureau at Berne accordingly.

ART. 14. Any person that has no domicile within the territory of the Kingdom in Europe shall elect domicile within this Kingdom on filing a trade mark of the kind specified in Arts. 4 or 7 and on presenting one of those petitions made according to Arts. 9, 10, 12*bis*, or 13.

All writs shall be served at the elected domicile.

ART. 15. The Recorder shall notify the Bureau of Industrial Property in writing, within three days after the decision rendered by a Tribunal.

The same notice shall be given by the Recorder of the Court as regards any decision rendered on appeal, and by the Recorder of the High Court as regards the result of an appeal in cassation.

In accordance with the decision of the Tribunal or of the Court, which has become effective, or in conformity with the judgment of the High Court, when the latter has rendered a final decision, the aforesaid Bureau shall register a trade mark or make a note of the annulment of the registration in a special column of the public Register where the trade mark shall have been entered.

The registration shall then be considered to have taken place on the date of filing or on that of the reception of the notification mentioned in Art. 8.

The aforesaid Bureau shall communicate to the International Bureau at Berne the notifications prescribed by the present article, if they concern one of the marks mentioned in Art. 8, as soon as the decision becomes effective.

ART. 16. The Bureau of Industrial Property shall publish:

1. The refusal of registration of a mark mentioned in Art. 8, as soon as the delay prescribed by the second paragraph of Art. 9 shall have expired without the petition provided for in said article having been presented, or as soon as a decision rejecting such petition has become effective;

2. The annulment of the registration of a mark of which

the description has already been published in the *Nederlandsche Staatscourant,* or of which the International registration has already been announced in the supplement of the journal of the International Bureau at Berne.

3. The lapse of a registration for one of the causes indicated in parts 1 or 3 of Art. 18;

4. The transfer, inscribed in conformity with Art. 20, of a mark registered in conformity with Art. 5.

The publications prescribed in the present article shall be made in the special supplements of the journal mentioned in the second paragraph of Art. 6.

ART. 17. The public Registers mentioned in Arts. 5 and 8 may be consulted gratuitously by any person in the Offices of the Bureau of Industrial Property.

Any person may obtain, at his cost, an extract or a copy, of which the cost will be calculated on the basis of Art. 11 of the tariff of law-costs and fees in civil cases.

Any person may obtain a written statement from the said Bureau upon the payment of three guilders in postage stamps of the Netherlands, the Dutch East Indies, Surinam, Curaçao, or of one of the other States being a party to the aforementioned Paris Convention.

ART. 18. A registration shall cease to produce its effects:

1. By cancellation effected at the request of the person in whose name the registration has been made or of that party in whose name the transfer has been inscribed in conformity with Art. 20;

2. By the lapse of twenty years, counting from the date when the registration took place in conformity with Arts. 5 or 8, if such registration has not been renewed before the expiration of that term, or if the renewal has not been repeated within the same term;

3. By the forfeiture or refusal of registration in the country of origin;

4. Counting from December 31, 1913, for all marks that contain, even with slight modifications, the name or the insignia of the "Red Cross," also called the "Geneva Cross."

The annulment of the registration for one of the causes mentioned in parts 1 or 3 shall be recorded with indications of the reasons in the column destined for that purpose in the public Register wherein the mark was inscribed.

ART. 19. In order to effect the renewal of a mark registered in conformity with Art. 5, the interested party shall observe, before the expiration of the term indicated in part 2 of

the preceding article, the same formalities as are indicated in Art. 4 for the first deposit.

The copies filed, referred to in the first paragraph of Art. 4, shall be certified, with the addition of the date of renewal.

The Bureau of Industrial Property shall proceed to the renewal of the registration by entering the date in the column destined for this purpose, of the public Register where the mark has been inscribed.

After the renewal of the registration of a mark registered in conformity with Art. 5, there shall be returned to the interested party, within three days, one of the copies mentioned in the second paragraph of the present article.

The fourth paragraph of Art. 5 and Art. 6 shall moreover be applicable to this mark.

If there be in question a mark deposited with a view to the renewal of the registration and the accomplishment of the formalities indicated in Art. 7, the third paragraph of said article will apply.

The renewal of the registration of a mark registered according to Art. 8 shall not be effected before the reception on the part of the International Bureau of Berne of the notification mentioned in said article.

This notification shall be certified with the addition of the date on which the renewal has been effected in the Register.

In case of renewal of registration in the country of an International mark registered anew, which has been deposited according to Art. 7, in the Bureau of Industrial Property, there will be delivered to the interested party, within three days, a dated acknowledgment.

With the renewed registration there are applicable the second and the third paragraphs of Art. 10 and the other articles of this law.

The Bureau of Industrial Property may refuse the renewed registration if the mark is in conflict with the stipulations of Art. 4, in which case the Bureau shall act in accordance with the first paragraph of Art. 9; in this case there are applicable the second paragraph of Art. 9, Art. 11, and the other articles of this law.

ART. 20. The transfer to a third party of a trade mark registered in accordance with Art. 5, will only be registered if the industrial or commercial establishment, of which the mark is destined to distinguish the products, has been transferred at the same time to the same person.

The proof of that which precedes shall be made by the deposit in the Bureau of Industrial Property of a certified extract

from the instrument relating thereto.

The transfer will be registered in case of marks registered in accordance with Art. 5, on the written application of the parties, or equally on the demand of the buyer alone if the transfer of the mark results sufficiently from the extract mentioned in the preceding paragraph; and in case of marks registered in accordance with Art. 8, after receipt of the notice from the International Bureau of Berne relative to the registration that has been effected there; it will be noted on the margin of the registration.

For the registration of the transfer of a mark registered in accordance with Art. 5, there will be due a Government fee of five guilders payable at the time when said inscription is applied for.

ART. 21. The International Bureau at Berne shall be immediately informed of any forfeiture or of any petition for registration of the transfer of a mark registered internationally which has been deposited in the Bureau of Industrial Property in accordance with Art. 7.

The transfer of a trade mark of this kind shall not be registered if the transfer is effected in favor of a person who is not a subject of the Dutch Government, who is not domiciled in one of the States that have become parties to the aforesaid Madrid Convention, and who does not possess within the territory of one of these States a regular industrial or commercial establishment for carrying on effectively some industry or trade.

SECTION III—TRANSITORY AND FINAL PROVISIONS

ART. 22. Those trade marks that, at the time when the present law shall become of effect, are already registered in accordance with the requirements of the law of May 25, 1880 (*Staatsblad,* No. 85), as amended by the law of July 22, 1885 (*Staatsblad,* No. 140), shall enjoy the same protection as if they were registered in accordance with the present law. The twenty years mentioned in Art. 18, part 3, shall commence to run for such trade marks from the day when the registration was effected in pursuance of the above mentioned law.

In order to apply Art. 7 to the present law such trade marks shall be considered as having been filed in accordance with Art. 4.

ART. 23. A mark that, at the time when the present law becomes of effect, has already been inscribed by the Recorder of some tribunal, shall, on the written request of the depositor, and excepting the provisions of Art. 9, be registered immediately by the Bureau of Industrial Property, in the public Register mentioned in Art. 5, on condition that the application

relative thereto shall have been presented before April 1, 1905.

The second and third paragraphs of Art. 5, the first and second paragraphs of Art. 6, and the other articles of the present law shall be applicable to such marks under the following conditions:

1. As regards Art. 6: The reproduction of the mark shall not appear in the publication unless there has been filed with the petition for registration a *cliché* made in conformity with the requirements contained in Art. 4, which *cliché* shall be returned after use to any applicant that may make a request to this effect;

2. As regards Art. 7: The mark shall be considered as having been filed in accordance with Art. 4;

3. The refusal of an application for registration filed before April 1, 1905, shall not be permitted and a petition or demand for annulment of the registration shall not be admissible.

ART. 24. The Recorder of the judicial body concerned shall send to the Bureau of Industrial Property one single copy of the decisions of the Tribunal, the Court, or the High Court mentioned in the first and in the second paragraphs of Art. 15, as also of all judgments rendered by virtue of Art. 337 of the Penal Code or in civil suits in matters of industrial property.

This sending shall take place within eight days for decisions tending to obtain the order for the registration of a mark, and within one month, reckoning from the date of the decision, for all other final decisions, judgments and sentences.

ART. 25. The present law shall not be applicable to trade marks established by public authority.

ART. 26. The law of May 25, 1880 (*Staatsblad,* No. 85), as amended by the law of July 22, 1885 (*Staatsblad,* No. 140), shall become inoperative as soon as the present law goes into effect.

ART. 27. This law shall come into operation on the day fixed by Royal Order,* and it may be cited as the Trade Marks Law.

ART. 28. The Minister of Agriculture, Industry and Commerce is charged with the carrying out of this law.

It is decreed and ordered that this shall be published in the *Staatsblad* and that all such Ministerial Departments, Boards and Functionaries as it concerns shall be charged with its punctual enforcement.

* December 1, 1893.

NEWFOUNDLAND

CONSOLIDATED STATUTES, THIRD SERIES

CHAPTER 154

Of Trade Marks and the Registration Thereof

1. (1) Every person who—

(a) Forges any trade mark; or

(b) Falsely applies to goods any trade mark, or any mark so nearly resembling a trade mark, as to be calculated to deceive; or

(c) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(d) Applies any false trade description to goods; or

(e) Disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a trade mark; or

(f) Causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this chapter, and unless he proves that he acted without intent to defraud, be guilty of an offence against this chapter.

(2) Every person who sells, or exposes for sale, or has in his possession for sale, or for any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, shall be guilty of an offence against this chapter, unless he proves—

(a) That having taken all reasonable precautions against committing an offence against this chapter, he had at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(b) That on demand made by, or on behalf of the prosecutor, he gave all information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently.

(3) Every person guilty of an offence against this chapter shall be liable—

(1) On conviction on indictment to imprisonment, with or

without hard labour, for a term not exceeding two years, or to a fine, or to both imprisonment and fine; and

(2) On summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding one hundred dollars; and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding two hundred dollars; and

(3) In any case, to forfeit to Her Majesty every chattel, article, instrument or thing, by means of or in relation to which the offence has been committed.

(4) The Court before which any person is convicted under this section may order any forfeited articles to be destroyed, or otherwise disposed of, as the Court thinks fit.

(5) If any person feels aggrieved by any conviction made by a Court of summary jurisdiction, he may appeal therefrom to the Supreme Court.

(6) Any offence for which a person is, under this chapter, liable to punishment on summary conviction, may be prosecuted, and any articles liable to be forfeited under this chapter, by a Court of summary jurisdiction, may be forfeited: Provided that a person charged with an offence under this section before a Court of summary jurisdiction, shall on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires, to be tried accordingly.

2. (1) For the purpose of this chapter—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the provisions of this chapter, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state, to which the provisions of the one hundred and third section of the Imperial "Patents, Designs and Trade Marks Act, 1883,"* are under order in Council for the time being applicable.

The expression "trade description" means any description, statement or other indication, direct or indirect:

(a) As to the number, quantity, measure, gauge or weight of any goods; or

(b) As to the place or country in which any goods were made or produced; or

(c) As to the mode of manufacturing or producing any goods; or

*Repealed; substantially the same as Great Britain: Patents and Designs Act, 1907, Sec. 91, which see.

(d) As to the material of which any goods are composed; or

(e) As to any goods being the subject of an existing patent privilege or copyright,

and the use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this chapter.

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this chapter.

The expression "goods" means anything which is the subject of trade, manufacture or merchandise.

The expressions "person," "manufacturer," "dealer" or trader" and "proprietor," include any body of persons corporate or incorporate.

The expression "name" includes any abbreviation of a name.

(2) The provisions of this chapter respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this chapter respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods, any name or initials of a person which—

(a) Are not a trade mark, or part of a trade mark; and

(b) Are identical with, or a colorable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials; and

(c) Are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

3. A person shall be deemed to forge a trade mark who either—

(a) Without the assent of the proprietor of the trade mark makes that trade mark, or a mark so nearly resembling that trade mark, as to be calculated to deceive; or

(b) Falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

and any trade mark or marks so made or falsified, is in this chapter referred to as a forged trade mark: Provided that in any prosecution for forging a trade mark, the burden of proving the assent of the proprietor shall lie on the defendant.

4. (1) A person shall be deemed to apply a trade mark, or mark or trade description to goods, who—

(a) Applies it to the goods themselves; or

(b) Applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed, or had in possession for any purpose of sale, trade or manufacture; or

(c) Places, encloses or annexes any goods which are sold or exposed, or had in possession for any purpose of sale, trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade mark or trade description has been applied; or

(d) Uses a trade mark, or mark, or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed or affixed to the goods, or to any covering, label, reel or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or marks, who, without the assent of the proprietor of a trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive; but in any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor shall lie on the defendant.

5. Where a defendant is charged with making any die, block, machine or other instrument for the purpose of forging or being used for forging a trade mark, or with falsely applying

to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(a) That in the ordinary course of his business he is employed on behalf of other persons to make dies, blocks, machines, or other instruments for making, or being used in making trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is a subject of the charge he was so employed by some person resident in Newfoundland, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b) That he took reasonable precautions against committing the offence charged; and

(c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description; and

(d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

6. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting a description of the country in which the watch was made and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this chapter, and the provisions of this chapter with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purpose of this section the expression "watch" means all that portion of a watch which is not the watch case.

7. In any indictment, pleading, proceeding or document in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

8. In any prosecution for an offence against this chapter—

(1) A defendant and his wife, or her husband, as the case may be, may if the defendant thinks fit be called as a witness, and, if called, shall be sworn and examined, and may be cross-

examined and re-examined in like manner as any other witness.

(2) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

9. Any person who, being within Newfoundland, procures, counsels, aids, abets or is accessory to the commission without Newfoundland of any act which, if committed in Newfoundland, would under this chapter be a misdemeanor, shall be guilty of that misdemeanor as principal, and be liable to be indicted, proceeded against, tried and convicted in any place in Newfoundland in which he may be, as if the misdemeanor had been there committed.

10. (1) Where, upon information of an offence against this chapter, a Justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said Justice on or after issuing the summons or warrant, or any other Justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things, by means of or in relation to which such offence has been committed, are in any house or premises of the defendant, or otherwise in his possession, or under his control in any place, such Justice may issue a warrant under his hand, by virtue of which it shall be lawful for any constable, named or referred to in the warrant, to enter such house, premises or place at any reasonable time by day and to search there for, and seize and take away, those goods or things; and any goods or things seized under any such warrant shall be brought before a Court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this chapter.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this chapter, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things, or any of them, to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this chapter, may be destroyed or otherwise disposed of in such manner as the Court by which

the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

11. The Imperial act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter seventeen, entitled "An Act to prevent vexatious indictments for certain misdemeanors," shall apply to any offence punishable on indictment under this chapter in like manner as if such offence were one of the offences specified in section one of that act.

12. On any prosecution under this chapter, the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

13. No prosecution for an offence against this chapter shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the discovery thereof by the prosecutor, whichever expiration first happens.

14. Whereas it is expedient to make further provision for prohibiting the importation of goods which if sold would be liable to forfeiture under this chapter; be it therefore enacted as follows:

(1) All such goods, and also all goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or Newfoundland, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into Newfoundland, and subject to the provisions of this section shall be included among goods prohibited to be imported as if they were specified in section 105 of chapter eight of these consolidated statutes.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the customs, the Board of Revenue may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Board of Revenue may from time to time make, revoke and vary regulations, either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom or Newfoundland, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in Newfoundland.

(5) Such regulations may apply to all goods, the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods, or of offences in relation to such goods.

(6) The Board of Revenue in making and administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Governor in Council.

(7) The regulations may provide for the informant reimbursing the Board of Revenue all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this subject shall be published in the *Royal Gazette.*

(9) This section shall have effect as if it were part of chapter eight of these consolidated statutes.

15. On the sale, or in the contract for the sale, of any goods to which a trade mark, or mark, or trade description, has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this chapter, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

16. Where at the passing of this chapter a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this chapter with respect to false trade descriptions shall not apply to such trade descriptions when so applied:

Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

17. (1) This chapter shall not exempt any person from any action, suit or other proceeding which might, but for the provisions of this chapter, be brought against him.

(2) Nothing in this chapter shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this chapter.

(3) Nothing in this chapter shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Newfoundland who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

18. Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of Her Majesty, or any of the royal family, or any government department, shall be liable on summary conviction to a penalty not exceeding one hundred dollars.

19. A register of trade marks shall be kept at the office of the Colonial Secretary, in which any proprietor of a trade mark may have the same registered on complying with the provisions of this chapter.

20. (1) For the purposes of this chapter, a trade mark must consist of or contain at least one of the following essential particulars:

(a) A name of an individual or firm printed, impressed or woven in some particular and distinctive manner; or

(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c) A distinctive device, mark, brand, heading, label or ticket; or

(d) An invented word or invented words; or

(e) A word or words having no reference to the character

or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words or figures, or of any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided as follows:

(a) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(b) Any special and distinctive word or words, letter, figure or combination of letters or figures, or of letters and figures used as a trade mark before the coming into force of these consolidated statutes, may be registered as a trade mark under this chapter.

21. A trade mark must be registered for particular goods or classes of goods.

22. A trade mark may be registered in any colour or colours, and such registration shall, subject to the provisions of this chapter, confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

23. The Colonial Secretary, subject to the approval of the Governor in Council, may make rules and regulations, and adopt forms for the purposes of this chapter as respects trade marks, and all documents executed according to the same, and accepted by the Colonial Secretary, shall be deemed to be valid so far as relates to official proceedings under this chapter.

24. The proprietor of a trade mark may have it registered on forwarding to the Colonial Secretary, together with the fee hereinafter mentioned, a drawing and description in duplicate of such trade mark, and a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof.

25. (1) Before any action is taken in relation to an application for registering a trade mark, the following fees shall be paid to the Colonial Secretary, that is to say:

On every application to register a trade mark, including certificate, $20.00; for the recording of an assignment, $1.00.

Such fees to be paid by the Colonial Secretary to the Receiver General for the use of the colony.

(2) If the Colonial Secretary refuses to register the trade mark for which application is made, the fee shall be returned to the applicant or his agent, less five dollars, which shall be retained as compensation for office expenses.

26. The Colonial Secretary may object to register any trade mark in the following cases:

(1) If the trade mark proposed for registration is identical with or resembles a trade mark already registered.

(2) If it appears that the trade mark is calculated to deceive or mislead the public.

(3) If the trade mark contains any immorality or scandalous figure.

(4) If the so-called trade mark does not contain the essentials necessary to constitute a trade mark properly speaking.

27. On compliance with the requirements of this chapter, and of the rules hereinbefore provided for, the Colonial Secretary shall register the trade mark of the proprietor so applying, and shall return to the said proprietor one copy of the drawing and description with a certificate, signed by the Colonial Secretary, to the effect that the said trade mark has been duly registered in accordance with the provisions of this chapter; and the day, month and year of the entry of the trade mark in the register shall also be set forth in such certificate; and every such certificate purporting to be so signed shall be received in all courts in Newfoundland as *prima facie* evidence of the fact therein alleged without proof of the signature.

28. A trade mark once registered and destined to be the sign in trade of the proprietor thereof shall endure without limitation.

29. Every trade mark duly registered shall be assignable in law, and on the assignment being produced, and the fee hereinbefore prescribed being paid, the Colonial Secretary shall cause the name of the assignee, with the date of the assignment and such other details as he shall see fit, to be entered on the margin of the register of trade marks, on the folio where such trade mark is registered.

30. Every person, other than the person who has registered the trade mark, who marks any goods, or any article of any description whatsoever, with any trade mark registered under the provisions of this chapter, or with any part of such trade mark, whether by applying such trade mark, or any part thereof, to the article itself, or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark, or who knowingly sells or offers for sale any article marked with

such trade mark, or with any part thereof, with the intent to deceive and to induce any person to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, is guilty of a misdemeanor and liable for each offence to a fine not exceeding one hundred dollars and not less than twenty dollars, which fine shall be paid to the proprietor of such trade mark, together with the cost incurred in enforcing and recovering the same.

(1) Every complaint under this section shall be made by the proprietor of such trade mark, or by someone acting on his behalf and thereunto duly authorised.

31. An action or suit may be maintained by any proprietor of a trade mark, which has been registered in pursuance of this chapter, against any person who uses his registered trade mark, or any fraudulent imitation thereof, or who sells any article bearing such trade mark or any such imitation thereof, or contained in any package, being or purporting to be his, contrary to the provisions of this chapter.

NEW ZEALAND

LAW NO. 18 OF JANUARY 13, 1922, EFFECTIVE JULY 1, 1922*

Short Title and commencement

1. This Act may be cited as the Patents, Designs, and Trade Marks Act. 1921-22, and shall come into operation on the first day of July, nineteen hundred and twenty-two.

Interpretation

2. In this Act, unless a contrary intention appears,—

. . . . . .

"Court" means the Supreme Court:

. . . . . .

"Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:

. . . . . .

"Register" means the Register of Patents, or the Register of Designs, or the Register of Trade Marks, as the context may require, under this Act:

"Registered trade mark" means a trade mark which is actually upon the Register:

"Registrable trade mark" means a trade mark which is capable of registration under the provisions of this Act:

"Registrar" means the Registrar of Patents, Designs, and Trade Marks:

"Trade mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of that trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

. . . . . .

PART III

TRADE MARKS

REGISTER OF TRADE MARKS

67. (1) There shall be kept at the Patent Office a book called the Register of Trade Marks, wherein shall be entered

* Matter not relating to Trade Marks is omitted.

all registered trade marks, with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed.

(2) The Register of Trade Marks existing at the commencement of this Act shall be incorporated with and form part of the Register of Trade Marks under this Act.

(3) Subject to the provisions of section one hundred and section one hundred and six of this Act, the validity of the original entry of any trade mark upon the Register so incorporated shall be determined in accordance with the statutes in force at the date of that entry, and any such trade mark shall retain its original date, but for all other purposes shall be deemed to be a trade mark registered under this Act.

Division of Register of Trade Marks into two parts

68. (1) The Register of Trade Marks shall be divided into two parts, to be called respectively Part A and Part B.

(2) Part A of the Register shall comprise all trade marks entered in the Register of Trade Marks at the commencement of this Act, and all trade marks which after the commencement of this Act may be registered otherwise than under the provisions of section eighty hereof.

(3) Part B of the Register shall comprise all trade marks registered under section eighty of this Act, and all trade marks entered on or removed thereto under this Act.

REGISTRABLE TRADE MARKS

Trade mark must be for particular goods

69. A trade mark must be registered in respect of particular goods or classes of goods.

70. (1) A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(a) The name of a company, individual, or firm represented in a special or particular manner:

(b) The signature of the applicant for registration, or some predecessor in his business:

(c) An invented word or invented words:

(d) A word or words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or a surname:

(e) Any other distinctive mark; but a name, signature, or word or words, other than such as fall within the descriptions in the preceding paragraphs (a), (b), (c), and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness:

Provided that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the first day of January, eighteen hundred and ninety, which has continued to be used (either in its original form or with additions or alterations not substantially affecting its identity) down to the date of the application for registration shall be registrable as a trade mark under this Act.

(2) For the purposes of this section "distinctive" means adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

(3) In determining whether a trade mark is so adapted any tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which that user has rendered the trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade marks

71. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of that trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration

72. It shall not be lawful to register as a trade mark or part of a trade mark any scandalous design, or any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of justice.

REGISTRATION OF TRADE MARKS IN PART A OF REGISTER

Application for registration

73. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Act the Registrar may refuse the application, or may accept it absolutely or subject to conditions, amendments, or modifications, or to such limitations (if any) as to mode or place of user or otherwise as he may think right to impose.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same; and the decision shall be subject to appeal to the Court.

(4) On any such appeal the Court may hear the applicant

and the Registrar, and may make an order determining whether and subject to what conditions, amendments, or modifications, if any, or to what limitations (if any) as to mode or place of user or otherwise, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar other than those stated by him, except by leave of the Court. Where any further grounds of objection are taken, the applicant shall, subject to rules of Court, be entitled to withdraw his application without payment of costs.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as the Registrar or the Court may think fit.

Advertisement of application

74. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, limitations, amendments, or modifications, the Registrar shall, as soon as may be after the acceptance, cause the application as accepted to be advertised. The advertisement shall set forth all conditions, limitations, amendments, and modifications subject to which the application has been accepted:

Provided that an application under the provisions of paragraph (e) of section seventy of this Act may be advertised by the Registrar on receipt of such application, and before acceptance.

Opposition to registration

75. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to the registration.

(2) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of the notice to the applicant; and within the prescribed time after the receipt of the notice the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(4) If the applicant sends a counter-statement the Regis-

trar shall furnish a copy thereof to the persons giving notice of the opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions (if any) or what limitations (if any) as to mode or place of user or otherwise, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) On any such appeal the Court may hear the parties and the Registrar, and may make an order determining whether, and subject to what conditions (if any) or what limitations (if any) as to mode or place of user or otherwise, registration is to be permitted.

(7) On the hearing of any such appeal any party may, either in accordance with rules of Court or by special leave of the Court, bring forward further material for the consideration of the Court.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinbefore provided, except by leave of the Court. Where any further grounds of objection are taken the applicant shall, subject to rules of Court, be entitled to withdraw his application without payment of costs.

(9) In any appeal under this section the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting its identity, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) If a party giving notice of opposition or of appeal neither resides nor carries on business in New Zealand, the Registrar or the Court, as the case may be, may require that party to give security for costs of the proceedings relative to the opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers

76. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether the trade mark shall be entered or shall remain upon the Register, may require, as a condition of its being upon the Register, that the proprietor shall disclaim any right to the exclusive use of any

part or parts of the trade mark, or of all or any portion of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under the registration:

Provided that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration

77. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall, unless the mark has been accepted in error or unless the Court otherwise directs, register the said trade mark; and the trade mark, when registered, shall be registered as of the date of the application for registration; and that date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration

78. On the registration of a trade mark the Registrar shall issue to the applicant a certificate, in the prescribed form, of the registration of that trade mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

Non-completion of registration

79. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

REGISTRATION OF TRADE MARKS IN PART B OF REGISTER

80. (1) Where any mark has for not less than two years been *bona fide* used in New Zealand upon or in connection with any goods (whether for sale in New Zealand or exportation abroad) for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with, or offering for sale, the person claiming to be the proprietor of the mark may apply in writing to the Registrar in the prescribed manner to have the mark entered as his registered trade mark in Part B of the Register in respect of such goods.

(2) The Registrar shall consider every such application for registration of a trade mark in Part B of the Register; and if it appears to him, after such search (if any) as he may deem necessary, that the application is inconsistent with the provisions of section seventy-two or section eighty-four or section one hundred and twenty-six of this Act, or if he is not satisfied that the mark has been so used as aforesaid or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to conditions, amendments, or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations (if any) as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application.

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the Register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the Court; and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark in Part A of the Register.

(5) Every such application shall, if accepted, be advertised in accordance with the provisions of this Act as to applications for registration in Part A.

(6) A mark may be registered in Part B notwithstanding any registration in Part A by the same proprietor of the same mark or any part or parts thereof.

Provisions applicable to trade marks in Part B

81. The provisions of this Part of this Act, with the exception of those set out in the First Schedule hereto, shall, except as otherwise provided herein, apply in respect of trade marks registered or registrable in Part B of the Register.

Effect of registration in Part B

82. The registration of a person as the proprietor of a trade mark in Part B of the Register shall be *prima facie* evidence that that person has the exclusive right to the use of that trade mark; but, in any action for infringement of a trade mark entered in Part B of the Register, no injunction or other relief shall be granted to the owner of the trade mark in respect of such registration if the defendant establishes to the satisfaction of the Court that the user of which the plaintiff complains is not calculated to deceive or to lead to the belief that the goods the subject of such user were goods manufactured, selected,

certified, dealt with, or offered for sale by the proprietor of the trade mark.

Power to treat applications for registration in Part A as applications for registration in Part B

83. If any person applies for the registration of a trade mark in Part A of the Register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the Register, and deal with the application accordingly.

IDENTICAL TRADE MARKS

84. Except by order of the Court or Registrar or in the case of trade marks in use before the first day of January, eighteen hundred and ninety, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the Register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

85. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks, in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court or have been settled by agreement in a manner approved by him.

Concurrent user

86. In case of honest concurrent user or of other special circumstances which in the opinion of the Court or Registrar make it proper so to do, the Court or Registrar may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations (if any) as to mode or place of user or otherwise as the Court or the Registrar, as the case may be, may think it right to impose.

ASSIGNMENT

Assignment and transmission of trade marks

87. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill. But nothing in this section shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in the United Kingdom, or in any British possession or protec-

torate or foreign country, in connection with any goods for which it is registered together with the goodwill of the business therein those goods; and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of the last preceding section, subject to such conditions and limitations as may be imposed under that section.

Apportionment of marks on dissolution of partnership

88. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of that person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of that person among the persons in fact continuing the business, subject to such conditions and modifications (if any), and to such limitations (if any) as to mode or place of user, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

89. If application is made for the registration of a trade mark identical with or so closely resembling a trade mark of the applicant already on the Register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that those trade marks shall be entered on the Register as associated trade marks.

Combined trade marks

90. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of that trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the Register as such; but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

91. When a person claiming to be the proprietor of several trade marks for the same description of goods, which, while

resembling each other in the material particulars thereof, differ in respect of—

(a) Statements of the goods for which they are respectively used or proposed to be used; or

(b) Statements of number, price, quality, or names of places; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) Colour,—

seeks to register those trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be and shall be registered as associated trade marks.

Assignment and user of associated trade marks

92. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks:

Provided that where, under the provisions of this Act, user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it thinks right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

SPECIAL TRADE MARKS

93. Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy, or other characteristic of any goods by mark used upon or in connection with such goods, the Registrar, if and so long as he is satisfied that such association or person is competent to certify as aforesaid, may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the registrar.

RENEWAL OF REGISTRATION

Duration of registration

94. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in

accordance with the provisions of this Act.

Renewal of registration

95. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of that trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration

96. At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor, at his registered address, of the date at which the existing registration will expire, and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained; and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the Register, subject to such conditions (if any) as to its restoration to the Register as may be prescribed.

Status of unrenewed trade mark

97. Where a trade mark has been removed from the Register for non-payment of the fee for renewal, the trade mark shall nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bona fide* trade user of that trade mark during the two years immediately preceding its removal.

CORRECTION OF THE REGISTER

Registration of assignments

98. (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark he shall make application to the Registrar to register his title; and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the Register of the assignment, transmission, or other instrument affecting the title. Any decision of the Registrar under this section shall be subject to appeal to the Court.

(2) Except in cases of appeals under this section and applications made under section one hundred and twenty-three of

this Act, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of subsection one hereof shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

Alteration of registered trade mark

99. (1) The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter that trade mark in any manner not substantially affecting its identity; and the Registrar may refuse such leave, or may grant the same on such terms, and subject to such limitations as to mode or place of user, as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court.

(2) If leave is granted, the trade mark as altered shall be advertised in the prescribed manner.

Trade marks registered under previous Acts

100. No trade mark which is upon the Register at the commencement of this Act, and which under this Act is a registrable trade mark, shall be removed from the Register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

Non-user of trade mark

101. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the Register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with those goods, and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of the trade mark in connection with those goods during the five years immediately preceding the application, unless in either case the non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in respect of those goods.

Rectification of Register

102. (1) Notwithstanding anything in section one hundred and twenty-three hereof, any application for the rectification of the Register of Trade Marks, or the removal of any trade marks from the Register in respect of any goods, may,

at the option of the applicant, be made in the first instance to the Registrar instead of to the Court:

Provided that no such application shall be made otherwise than to the Court where an action concerning the trade mark in question is pending.

(2) The Registrar may at any stage of the proceedings refer any such application to the Court, or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

(3) In any proceedings for the rectification of the Register of Trade Marks the Court or the Registrar shall, in addition to any other powers, have power to direct a trade mark entered in Part A of the Register to be removed to Part B of the Register.

EFFECT OF REGISTRATION

Powers of registered proprietor

103. Subject to the provisions of this Act—

(a) The person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from the Register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for the assignment:

(b) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

104. Subject to the provisions of section one hundred and six of this Act, and to any limitations and conditions entered upon the Register, the registration of a person as proprietor of a trade mark shall, if valid, give to that person the exclusive right to the use of that trade mark upon or in connection with the goods in respect of which it is registered:

Provided that where two or more persons are registered proprietors of the same, or substantially the same, trade mark in respect of the same goods, no rights of exclusive user of that trade mark shall (except so far as their respective rights have been defined by the Court) be acquired by any one of those persons as against any other by the registration thereof, but each of those persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be prima facie evidence of validity

105. In all legal proceedings relating to a registered trade mark (including applications under section one hundred and twenty-three of this Act) the fact that a person is registered as

proprietor of the trade mark shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years

106. In all legal proceedings relating to a registered trade mark (including applications under section one hundred and twenty-three of this Act) the original registration of that trade mark shall, after the expiration of seven years from the date of the original registration or seven years from the commencement of this Act, whichever last happens, be taken to be valid in all respects unless the original registration was obtained by fraud, or unless the trade mark offends against the provisions of section seventy-two or section one hundred and twenty-six of this Act:

Provided that nothing in this Part of this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which that person has, by himself or his predecessors in business, continuously used that trade mark from a date anterior to the user or registration, whichever is the earlier, of the first mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to that person being put upon the Register for such similar trade mark in respect of those goods under the provisions of section eighty-six of this Act.

Unregistered trade mark

107. No person shall be entitled to institute any proceeding to prevent or to recover damages or profits in respect of the infringement of an unregistered trade mark unless that trade mark was in use before the first day of January, eighteen hundred and ninety, and has been refused registration under this Act or any former Act relating to trade marks. The Registrar may, on request, grant a certificate that such registration has been refused.

Trade usage to be admitted in evidence

108. In any action or proceeding relating to a trade mark or trade name the Court or Registrar, as the case may be, shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

User of name, address, or description of goods

109. No registration of a trade mark under this Act shall interfere with any *bona fide* use by a person of his own name

or place of business, or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing off" action

110. Nothing in this Part of this Act shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

PROVISIONS FOR THE PREVENTION OF ABUSES OF TRADE MARKS

Removal from Register of word trade marks used as names of articles

111. (1) Where, in the case of an article or substance manufactured under any patent in force at or granted after the commencement of this Act, a word trade mark registered under this Act (whether in Part A or Part B of the Register) is the name or only practicable name of the article or substance so manufactured, all rights to the exclusive use of such trade mark, whether under the common law or by registration (and notwithstanding the provisions of section one hundred and six hereof), shall cease upon the expiration or determination of the patent; and thereafter such word shall not be deemed a distinctive mark, and may be removed by the Court from the Register on the application of any person aggrieved.

(2) No word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark; and any such word now or hereafter on the Register may, notwithstanding the provisions of section one hundred and six hereof, be removed by the Court from the Register on the application of any person aggrieved:

Provided that—

(a) The provisions of this subsection shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable and practicable name open to the public use; and

(b) In the case of marks registered before the commencement of this Act, no application under this section for the removal of the mark from the Register shall be entertained until after the expiration of four years from the commencement of this Act.

(3) The power to remove a trade mark from the Register conferred by this section shall be in addition to and not in derogation of any other powers of the Court in respect of the removal of trade marks from the Register.

(4) The provisions of this Act, authorizing applications for the rectification of the Register to be made in the first instance to the Registrar instead of to the Court, shall apply to applications under this section.

Certificate of Validity

112. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of that trade mark, the Court may certify the same; and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the trade mark, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless in that subsequent proceeding the Court certifies that he ought not to have the same.

PART IV

GENERAL

ADMINISTRATION OF THE PATENT OFFICE

Patent Office, Registrar of Patents, Etc.

113. (1) There may from time to time be appointed some fit person to be the Registrar of Patents, Designs, and Trade Marks.

(2) The person who at the commencement of this Act holds the office of Registrar of Patents, Designs, and Trade Marks under the Patents, Designs, and Trade Marks Act, 1911, shall be deemed to have been appointed as Registrar of Patents, Designs, and Trade Marks under this Act.

(3) The Governor-General may from time to time appoint a place to be the Patent Office. The place at the commencement of this Act used as the Patent Office shall be deemed to have been appointed under this Act.

Deputy Registrar of Patents, Etc.

114. (1) There may be appointed a fit and proper person to be Deputy Registrar to act in the case of the illness, incapacity, or absence of the Registrar, or in the case of any vacancy in the office of Registrar; and while so acting such Deputy shall have all the powers and privileges, and shall perform all the duties, and be subject to the responsibilities of the Registrar.

(2) The fact of the Deputy Registrar acting as aforesaid shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorizing him so to act.

(3) The person who at the commencement of this Act holds

the office of Deputy Registrar under the Patents, Designs, and Trade Marks Act, 1911, shall be deemed to have been appointed the Deputy Registrar under this Act.

Local Patent Offices and Officers

115. (1) There may from time to time, for the purposes of this Act, be appointed such Local Patent Offices and Local Patent Officers as may be required.

(2) All appointments of Local Patent Offices in force at the commencement of this Act under the Patents, Designs, and Trade Marks Act, 1911, shall be deemed to be made under this Act; and all Local Patent Officers holding office under that Act at the commencement of this Act shall be deemed to be appointed as Local Patent Officers under this Act.

Seal of Patent Office

116. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

Fees

117. There shall be paid in respect of the grant of patents, and the registration of designs and trade marks and applications therefor, and in respect of other matters with relation to patents, designs, and trade marks under this Act, such fees as may from time to time be prescribed by the Governor-General in Council; and those fees shall be paid into the Public Account and form part of the Consolidated Fund.

PROVISIONS AS TO REGISTERS AND OTHER DOCUMENTS IN PATENT OFFICE

Trust not to be entered in Registers

118. There shall not be entered in any Register kept under this Act, or be receivable by the Registrar, any notice of any trust expressed, implied, or constructive.

Inspection of and extracts from Registers

119. Every Register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such Register shall be given to any person requiring the same on payment of the prescribed fee.

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Power of Registrar to correct clerical errors

121. The Registrar may, on request in writing accompanied by the prescribed fee,—

. . . . . .

(b) Cancel the registration of a . . . trade mark either wholly or in respect of any particular goods or classes of goods in connection with which the . . . trade mark is registered:

(c) Correct any clerical error in the representation of a . . . trade mark, or any clerical error or change in the name or address of the proprietor of any . . . trade mark, or any clerical error in any other matter which is entered upon the . . . Register of Trade Marks:

(d) Enter any disclaimer or memorandum relating to a . . . trade mark which does not in any way extend the rights given by the existing registration of that . . . trade mark.

. . . . . .

Rectification of Registers by Court

123. (1) The Court may, on the application of any person aggrieved by the non-insertion in or omission from the . . . Register of Trade Marks . . . of any entry, or by any entry made in any such Register without sufficient cause, or by any entry wrongly remaining on any such Register, or by an error or defect in any entry in any such Register, make such order for making, expunging, or varying that entry as it thinks fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a Register.

(3) Notice of any application under this section shall be given to the Registrar.

(4) Any order of the Court rectifying a Register shall direct that notice of the rectification be served on the Registrar, who shall upon the receipt of the notice rectify the Register accordingly.

POWERS AND DUTIES OF REGISTRAR

Exercise of discretionary power by Registrar

124. Where any discretionary power is by or under this Act given to the Registrar he shall not exercise that power adversely to the applicant . . . for registration of a . . . trade mark, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Registrar may grant extension of time

125. (1) Where by this Act anything is required to be done within a prescribed time and by reason of delay in the Patent Office such thing is not so done, the Registrar may extend the time for the doing of such thing without requiring payment of any fee.

(2) The power conferred on the Registrar by this section may be exercised notwithstanding that in any case the time

limited may have expired before the commencement of this Act.

Refusal to grant patent, &c., in certain cases

126. The Registrar may refuse to . . . register a . . . trade mark of which the use would, in his opinion, be contrary to law or morality.

Costs

127. In all proceedings before the Registrar under this Act the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid; and any such order may be made a rule of Court.

Annual reports of Registrar

128. The Registrar shall in every year cause a report respecting the execution by or under him of this Act to be laid before Parliament, and therein shall include for the year to which the report relates an account of all fees, salaries and allowances, and other moneys received and paid under this Act.

EVIDENCE, &C.

Evidence before Registrar

129. (1) Subject to regulations under this Act, in any proceeding under this Act before the Registrar the evidence shall be given by statutory declaration in the absence of directions to the contrary; but in any case in which the Registrar thinks it right so to do he may take evidence *viva voce* in lieu of or in addition to evidence by declaration, or allow any declarant to be cross-examined on his declaration. Any such statutory declaration may, in the case of appeal, be used before the Court in lieu of evidence by affidavit, and if so used shall have all the incidents and consequences of evidence by affidavit. Every such statutory declaration shall be exempt from stamp duty.

(2) In any proceeding under this Act before the Registrar he may administer oaths to any witness, and may in the prescribed manner require the attendance of any witness and discovery and production of documents.

(3) The Governor-General may from time to time, by Order in Council, make regulations—

(a) Prescribing the manner in which witnesses may be required to attend and to give evidence in any proceedings before the Registrar:

(b) Making provision for the payment of the expenses of such witnesses:

(c) Imposing fines not exceeding twenty pounds for the failure or refusal of any person so to attend and give evidence.

Certificate of Registrar to be evidence

130. A certificate, purporting to be under the hand of the Registrar, as to any entry, matter, or thing which he is authorized by this Act, or any regulations made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or left undone.

Evidence of documents in Patent Office

131. Printed or written copies or extracts, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, of or from patents, specifications, and other documents in the Patent Office, and of or from Registers and other books kept there, shall be admitted in evidence in all Courts of justice, and before all persons acting judicially, and in all proceedings, without further proof or production of the originals.

Applications and notices by post

132. Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office, or at a Local Patent Office, or to the Registrar, or to any other person under this Act, may be sent by post.

Excluded days

133. Where the last day fixed by this Act for doing anything under this Act falls on any day specified in regulations under this Act as an excluded day, the rules may provide for the thing being done on the next following day not being an excluded day.

Declaration by infant, lunatic, &c.

134. (1) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration, or doing anything required or permitted by or under this Act, the guardian or committee (if any) of the person subject to the disability, or, if there is none, any person appointed by any Court possessing jurisdiction in respect of his property, may make that declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do that thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability, or of any other person interested in the making of the declaration or the doing of the thing.

PATENT AGENTS

Registration of Patent Agents

135. (1) No person shall practice, describe himself, or

hold himself out, or permit himself to be described or held out, as a Patent Agent unless,—

(a) In the case of an individual, he is registered as a Patent Agent in the Register of Patent Agents:

(b) In the case of a firm, every partner of the firm is so registered:

(c) In the case of a company which commences to carry on business as a Patent Agent after the commencement of this Act, every director and the manager (if any) of the company is so registered:

(d) In the case of a company which is carrying on business as a Patent Agent on the date of the commencement of this Act, a manager or a director of the company is so registered:

Provided that in the last-mentioned case the name of such manager or director shall be mentioned as being a registered Patent Agent in all professional advertisements, circulars, or letters in which the name of the company appears.

(2) Every person not registered as a Patent Agent before the first day of October, nineteen hundred and twenty-one, who proves to the satisfaction of the Registrar that he was on that date *bona fide* practising as a Patent Agent, whether individually or as a member of a firm or as a manager or director of a company, shall be entitled to be registered as a Patent Agent if he makes application for the purpose within six months from the date of the commencement of this Act unless, after giving an applicant an opportunity of being heard, the Registrar is satisfied that he has, while so practising, been guilty of such misconduct as would have rendered him liable, if his name had been on the Register of Patent Agents, to have his name erased therefrom.

(3) If any person contravenes the provisions of this section he shall be liable on summary conviction to a fine not exceeding twenty pounds; and in the case of a company every director, manager, secretary, or other officer of the company who is knowingly a party to the contravention shall be guilty of a like offence and liable to a like fine.

(4) For the purposes of this section the expression "Patent Agent" means a person, firm, or company carrying on for gain in New Zealand the business of applying for or obtaining patents in New Zealand or elsewhere.

(5) No person shall, after the commencement of this Act, be registered as a Patent Agent unless he is a British subject.

(6) Nothing in this section shall be taken to prohibit solicitors of the Supreme Court of New Zealand from taking such part as they have heretofore taken in any proceedings under

any Act relating to Patents, Designs, or Trade Marks.

(7) The Register of Patent Agents existing at the commencement of this Act shall be incorporated with and form part of the Register of Patent Agents under this Act.

Agents for patents

136. (1) Regulations under this Act may authorize the Registrar to refuse to recognize as agent in respect of any business under this Act any person whose name has been erased from the Register of Patent Agents, or who is proved to the satisfaction of the Registrar, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the Register of Patent Agents, to have his name erased therefrom; and may authorize the Registrar to refuse to recognize as agent in respect of any business under this Act any company which, if it had been an individual, the Registrar could refuse to recognize as such agent.

(2) Where a company or firm acts as agents, such regulations as aforesaid may authorize the Registrar to refuse to recognize the company or firm as agent if any person whom the Registrar could refuse to recognize as an agent acts as director or manager of the company or is a partner in the firm.

(3) Except as otherwise provided in this subsection, the Registrar shall refuse to recognize as agent in respect of any business under this Act any person who neither resides nor has a place of business in New Zealand:

Provided that the Registrar may, in his discretion, recognize as such agent any person not having a place of business in New Zealand, but resident in a country in which persons resident in New Zealand are recognized as Patent Agents although having no place of business in that country.

Recovery of agents' charges

137. No Patent Agent, or person acting in that capacity, shall commence or maintain any action for the recovery of any fees, charges, or disbursements paid or incurred or made by him for any business done by him on behalf of any person who claims to be the true and first inventor of an invention in the matter of any application for a patent until the expiration of seven days after a bill of such fees, charges, and disbursements, signed by him (or, in the case of a partnership, by any of the partners with the name of such partnership), or enclosed in or accompanied by a letter signed in like manner referring to such bill, has been delivered to the party chargeable. Such delivery may be effected either by personal delivery to the

party chargeable or by leaving the bill or letter for him at his place of business, or dwellinghouse, or last known place of abode, or by forwarding the same to him by post in a registered letter addressed to him as aforesaid.

Regulations

138. (1) The Governor-General in Council may from time to time make such regulations as he thinks expedient, subject to the provisions of this Act,—

(a) For regulating the practice of registration under this Act:

(b) For classifying goods for the purposes of designs and trade marks:

(c) For making or requiring duplicates of specifications, drawings, and other documents:

(d) For prescribing the mode of advertising any matter which by this Act is required to be advertised:

(e) For securing and regulating the publishing and selling or distributing of copies of specifications, drawings, and other documents:

(f) For securing and regulating the making, printing, publishing, and selling of indexes to and abridgments of specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(g) For regulating the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions in New Zealand or elsewhere:

(h) For regulating the keeping of the Register of Patent Agents under this Act, the registration of Patent Agents, the terms and conditions of such registration, and the cases and manner in which such registration may be cancelled:

(i) Generally for regulating the business of the Patent Office and all things by this Act placed under the direction or control of the Registrar.

(2) All regulations made in pursuance of this Act shall be published in the *Gazette,* and shall be laid before Parliament as soon as practicable after they are made; and if either House of Parliament, within the next forty days after any regulations have been so laid before that House, resolves that the regulations or any of them ought to be annulled, the regulations, or those to which the resolution applies, shall after the date of that resolution be of no effect, without prejudice to the validity of anything done in the meantime under the regulations or to the making of any new regulations.

LEGAL PROCEEDINGS

Rules of Court

139. The Governor-General in Council, with the concurrence of any two or more of the Judges of the Court, may from time to time make rules of practice and procedure, consistent with this Act, for regulating proceedings in the Court under this Act; and subject thereto such proceedings shall be taken in accordance with the practice and procedure of the Court in like cases.

Appeals

140. (1) Every appeal given by this Act against a decision of the Registrar shall be by way of motion, of which notice shall be filed in the Court and served upon the Registrar within twenty-eight days after the day on which the decision appealed against was given.

(2) In any such appeal the Court shall have and may exercise the same discretionary powers as are conferred upon the Registrar.

Registrar to have notice of proceeding for rectification

141. (1) In any legal proceeding in which the relief sought includes alteration or rectification of a Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court.

(2) Unless otherwise directed by the Court, the Registrar, in lieu of appearing and being heard, may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue, or of the grounds of any decision given by him affecting the same, or of the practice of the Patent Office in like cases, or of such other matters relevant to the issues and within his knowledge as such Registrar, as he thinks fit; and that statement shall be deemed to form part of the evidence in the proceeding.

Costs of proceedings before the court

142. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

OFFENCES

143. (1) Every person who makes or causes to be made a false entry in any Register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such Register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, is liable on indictment to imprisonment with or without

hard labour for any term not exceeding two years.

(2) Every person who falsely . . . describes any . . . trade mark applied to any article sold by him as registered in New Zealand is liable on summary conviction to a fine of twenty pounds.

(3) Every person who sells an article having stamped, engraved, or impressed thereon, or otherwise applied thereto, the words . . . "registered in New Zealand," or any other words or letters implying that the . . . trade mark applied thereto is registered in New Zealand, shall be deemed for the purposes of this section to represent that the . . . trade mark is so registered.

(4) Every person who, after the expiry of . . . the registration of a . . . trade mark registered in New Zealand, puts or causes to be put on any article to which the . . . trade mark had been applied, the words . . . "registered in New Zealand," or other words or letters implying that there is a . . . registration of a trade mark subsisting in New Zealand, is liable on summary conviction to a fine of twenty pounds.

(5) If any person uses on his place of business, or on any document issued by him or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable on summary conviction to a fine of twenty pounds.

INTERNATIONAL AND COLONIAL ARRANGEMENTS

144. (1) Subject to the provisions of this section, any person who has applied for protection for any . . . trade mark in any country to which this section applies, or his legal representative or assignee, shall be entitled . . . to registration of his . . . trade mark, under this Act in priority to other applicants; and the . . . registration shall have the same date as the date of the application in that country: Provided that—

(a) The application is made . . . (in the case of a . . . trade mark) within six months from the application for protection in that country; and

(b) Nothing in this section shall entitle the . . . proprietor of the . . . trade mark to recover damages or an account of profits in respect of infringements happening prior to the actual date on which his . . . trade mark is registered in New Zealand.

(2) The . . . registration of the . . . trade mark shall not be invalidated,—

. . . . . .

(c) In the case of a trade mark, by reason only of the use of the trade mark—

in New Zealand during the period specified in this section as that within which the application may be made.

(3) The application for the . . . registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act: Provided that,—

. . . . . .

(b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act.

(4) This section applies to the following countries only:—

(a) The United Kingdom:

(b) Any country (whether a foreign State or a British possession) to which this section is declared to be applicable by an Order in Council made by the Governor-General under the authority hereinafter expressed, subject, however, to any restrictions or limitations imposed by that Order in Council:

(c) Any foreign State to which section ninety-one of the Imperial Patents and Designs Act, 1907,* is applicable for the time being by virtue of any Order in Council made by His Majesty, whether before or after the commencement of this Act, subject, however, to any restrictions or limitations imposed by that Order in Council in respect of the application of the said section.

(5) Where it is made to appear to the Governor-General that satisfactory provision has been made as between New Zealand and any foreign State or British possession for the mutual protection of inventions, designs, or trade marks, the Governor-General may, by Order in Council, declare that this section shall apply to that foreign State or British possession as from a date to be specified in the Order in Council, subject, however, to such restrictions or limitations (if any) as the Governor-General thinks fit.

(6) The Governor-General may at any time, by Order in Council, declare that, as from a date to be specified in the Order, this section—

(a) Shall no longer apply to any country named in the Order:

(b) Shall in its application to that country be subject to the restrictions or limitations specified in the Order.

(7) Every Order in Council made by the Governor-General under section one hundred and twenty-nine of the Patents, Designs, and Trade Marks Act, 1911, or the corresponding provisions of any former Act, and in force at the commencement

*For the provisions in question, see Great Britain.

of this Act, shall continue in force and shall operate as if made under this section, and this section shall apply accordingly to every country to which any such Order in Council relates, subject, however, to any restrictions or limitations imposed by the Order.

REPEALS AND SAVINGS

Saving of prerogative of Crown

145. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

Repeals and Savings

146. (1) The enactments mentioned in the Second Schedule hereto are hereby repealed.

(2) Except where otherwise expressly provided, this Act shall apply to trade marks registered before as well as after the commencement of this Act.

NICARAGUA

DECREE OF NOVEMBER 21, 1907

ARTICLE 1. The State shall protect within its territory the exclusive ownership of marks of manufacture and of commerce authorized in conformity with this law.

ART. 2. A mark of manufacture or of commerce is the special sign applied to an agricultural or industrial product, or to a commercial article, to advise the public of its origin and to distinguish it from other products of the same kind.

ART. 3. The choice of the sign which is to constitute a mark shall pertain to the producer of the article for which it is destined; but the following may not be used in the Republic as marks:

I. Generic terms, names merely geographical and those of individuals or associations, unless the mark contains in addition distinctive features which serve to distinguish the object for which it is destined;

II. Any sign that is contrary to morals, or that tends to ridicule ideas, persons, objects or institutions which, in the judgment of the Ministry of Fomento are worthy of general consideration;

III. The National arms, escutcheons and emblems;

IV. The arms, escutcheons or emblems of foreign nations, states or political corporations, without their respective consent;

V. The names, firms and portraits of living persons, without their consent;

VI. Marks identical with or substantially similar to those that have been already registered when it is sought to protect with the former products of the same class as those protected by the latter.

ART. 4. The Government shall establish a special Office for the registration of marks. Until such time, the Direction General of Public Works shall discharge these duties, and the chief thereof shall have charge of the said registration.

ART. 5. Applications for registration shall be presented to the Ministry of Fomento on stamped paper of the sixth class, signed by the interested party or by his representative, the latter to be provided at least with an authentic letter-power of attorney, and shall contain the following:

a) The name of the owner of the mark, his domicile and nationality;

b) The name and location of the factory or establishment where the article is produced for which the mark is destined;

c) The enumeration and description of the objects or products that it is intended to distinguish by means of the mark;

d) A description of the mark, illustrated by a facsimile of the same, reproduced in triplicate;

e) In case the mark is arranged in intaglio or in relief or presents any other peculiarity that cannot be shown graphically, there shall be presented two like copies with an indication of the particulars and details.

ART. 6. The registration of each mark shall entail a charge of twenty-five pesos and it should be renewed every ten years. Delay in the renewal does not occasion the loss of the right to the exclusive use of the mark, but, until it has been accomplished, the interested party shall not bring action to prosecute infringers of the mark and of the article which it protects.

ART. 7. An application in regard to the registration of a mark having been presented, the Minister of Fomento shall request a report from the Chief of the Registration Office. This official shall make an examination of the documents presented in order to ascertain if they satisfy the requirements of the law, and shall complete the resulting report within the third day. If it is favorable, the Minister of Fomento shall give an order to register it, on payment of the respective fees.

ART. 8. The registration of a mark shall always be made without prejudice to third parties, and upon the exclusive responsibility of the applicant.

ART. 9. The registration having been effected, the Chief of the Office shall send to the party interested the certification of the matter, on stamped paper of the first class, the document that constitutes the title to the exclusive use of the mark.

ART. 10. Questions that may arise in regard to the right to the exclusive use of a mark, in regard to the priority of its registration and in regard to its identity with others already registered, shall be decided by the ordinary Tribunals.

ART. 11. When there has been litigation the sentence of execution shall be registered and noted on the certificate of registration.

ART. 12. Whenever there is presented an application for registration of a mark of which Art. 5 treats, the Ministry shall cause it to be published in the official journal for three consecutive months.

The ninety days having elapsed, if no opposition has been presented, the Ministry shall resolve to grant to the applicant the title of ownership of the mark, which shall be issued on a

sheet of stamped paper of the first class.

ART. 13. If there has been opposition, the Ministry shall order the parties to argue their rights before the competent lower judge, and in such case shall only issue the title to him to whom the greater right has been declared by sentence of execution.

ART. 14. Trade marks may only be transferred along with the establishment producing the objects that they served to distinguish. Consequently, the transfer of a mark carries with it the right of industrial or commercial exploitation of the products protected by it. The transfer is not subject to any special formality and shall be proved according to common law, but it should be registered in the Trade Mark Office, without which requisite it shall be without effect against third parties.

ART. 15. The registration of a mark shall be null when it has been effected in contravention of the provisions of this law, as also when the mark has been previously registered by another, in which case the nullity shall be judicially declared upon petition of the interested party.

Advice of the sentence of nullity shall be given to the Ministry of Fomento by the judge or Tribunal that has taken cognizance of it in the last instance.

ART. 16. Action demanding nullity of the registration of a mark shall be open to anyone that believes himself to be prejudiced thereby; the Public Ministry may also bring it in those cases in which there is any general interest.

ART. 17. Questions regarding nullity of which the last article treats shall be decided by the ordinary Tribunals and the sentences of execution that contain such decisions shall be registered in the respective Office.

ART. 18. The following shall be considered guilty of the offense included in Art. 319 of the Penal Code and shall be punished by the penalties therein established:

a) Those that place on articles or products that they sell or manufacture a mark at that time legally registered in favor of another person;

b) Those that place on articles or products that they sell or produce, a mark that is so close an imitation of one legally registered, as to be confounded with the lawful mark at first sight;

c) Those that place on the articles mentioned a mark that, although legally registered, is made to appear by any addition, deletion or alteration, as if it were another mark.

d) Those that place on sale or put into circulation goods

marked in accordance with the conditions that the preceding sections enumerate.

ART. 19. Articles or products—objects of the offenses named in the preceding article—shall be confiscated; but when the owner of a mark, legally registered, shall have been made plaintiff, he shall be entitled to have adjudged to him all the products that are found bearing the illegal mark, whether then in the possession of the guilty party or in the possession of an agent or consignee.

ART. 20. Trade marks shall be preserved in the Registration Office in perpetuity, as also the books in which are entered the details belonging to them; both may be examined by whoever makes the request during the hours which are designated for that object, and the applicant may obtain at his own expense, a certified copy of the registration on payment of the fee of one peso for each certification issued, in addition to that of making the copy.

ART. 21. There shall not be considered as marks, the form, color, locutions, or designations that do not constitute by themselves alone the distinctive sign of the specialty, in a commercial sense, of an industrial product.

ART. 22. The duration of the ownership of a trade mark is indefinite; but it shall be considered abandoned by reason of the closing, or lack of production for more than one year, of the establishment, factory, or business in which it was used.

ART. 23. Designs and industrial models are comprised in the provisions of this law.

ART. 24. The provisions of the present law shall be applicable to all that which is not contrary to international treaties in regard to the matter, especially in regard to marks of commerce and of manufacture celebrated during the Second International American Conference, January 27, 1902.

ART. 25. This law shall become of effect from the date of its publication in the *Gaceta Oficial.*

NIGERIA

ORDINANCE NO. 20 OF DECEMBER 31, 1914

Short Title and Application

1. This Ordinance may be cited as the Trade Marks Ordinance, 1914, and shall apply to the Colony and Protectorate.

DEFINITIONS

Interpretation

2. Definitions:—

"Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

"Trade Mark" means a mark used or proposed to be used upon or in connexion with goods for the purposes of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

"Registrable Trade Mark" means a trade mark which is capable of registration under the provisions of this Ordinance.

"Registered Trade Mark" means a trade mark which is actually on the register.

"Prescribed" means, in relation to proceedings before the Court, prescribed by Rules of Court; and, in other cases, prescribed by this Ordinance or any Regulations made thereunder.

"Registrar" means such officer as the Governor shall appoint to be the Registrar of Trade Marks and until such appointment is made means the Comptroller of Customs.

"Court" means the Supreme Court of Nigeria.

"Goods" means anything which is the subject of trade, manufacture, or merchandise.

"Northern Provinces" means that portion of the Protectorate which, on the 31st day of December, 1913, was included in the Protectorate of Northern Nigeria.

REGISTER OF TRADE MARKS

3. There shall be kept at the Registrar's Office a book called the register of trade marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, the dates on which applications were made for their registration, as hereinafter provided, notifications of assignments, and of transmissions of trade marks, and such other matter as may be from time to time prescribed.

No Trust to be Entered on Register

4. There shall not be entered in the register kept under this Ordinance any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of Existing Register and Classification

5. The register of trade marks existing at the date of the commencement of this Ordinance shall be incorporated with and form part of the register. Subject to the provisions of sections 43 and 48, the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the Ordinances in force at the date of such entry, and such trade mark shall retain its original date, but subject to the provisions of section 7, for all other purposes it shall be deemed to be a trade mark registered under this Ordinance.

All trade marks registered under the classification of goods as provided in the Schedule to the Trade Marks Ordinance, 1910, shall be deemed to be registered under the corresponding classification of goods as provided in the regulations under this Ordinance.

Saving for Marks Already Registered Under Trade Marks Proclamation, 1900

6. (1) Nothing herein contained shall affect the validity of any act done or any right or obligation acquired or incurred under or by virtue of the provisions of the Trade Marks Proclamation, 1900, enacted by the High Commissioner of the Protectorate of Southern Nigeria, or of any Proclamation enacted amending the same, or of any rules made thereunder.

Transfer to Register Created Under This Ordinance

(2) All trade marks duly registered under the said Trade Marks Proclamation, 1900, shall, three months before the expiration of the first period of registration, be transferred to the register kept under the provisions of this Ordinance, and shall thereupon, subject to the provisions of section 7, be subject to the provisions of this Ordinance in all respects as though they had been originally registered thereunder.

Rights in Respect of a Trade Mark Registered Before the Commencement of the Ordinance Not to Extend to Northern Provinces Unless Extended in Accordance with the Provisions of Next Section

7. The rights and privileges by this Ordinance conferred upon the proprietor of a registered trade mark shall not, in the case of a trade mark registered before the commencement of this Ordinance, extend to the Northern Provinces of the Protec-

torate unless the same are extended thereto in the manner hereinafter provided.

Application for Extension of Rights to the Northern Provinces

8. (1) The proprietor of a trade mark registered before the commencement of this Ordinance may by himself or his agent apply to the Registrar for the extension to the Northern Provinces of the Protectorate of the rights and privileges conferred by this Ordinance as the proprietor of such trade mark in the Colony and Southern Provinces of the Protectorate.

Procedure

(2) The provisions of this Ordinance relating to an application for the registration of a trade mark and to notice of opposition to such registration, to the procedure on and after such application or notice, and to the power of the Registrar and the Court shall *mutatis mutandis* apply in the case of every application under sub-section (1).

Registration of Extension

(3) When an application under sub-section (1) has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise directs, enter in the register a notice that the rights and privileges by this Ordinance conferred upon the proprietor of the trade mark in respect of which the application has been made are extended to the Northern Provinces of the Protectorate.

Inspection of Register and Granting of Certified Copies

9. The register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance and to such regulations as may be prescribed; and certified copies of any entry in any such register shall be given to any persons requiring the same, on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade Marks—What Marks Are Registrable as Such

10. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods and not being according to its

ordinary signification a geographical name or a surname;

(5) Any other distinctive mark; but a name, signature, or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered:

Provided always that any mark which has been registered as a distinctive mark in England under the Trade Marks Act, 1905, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Connexion of Trade Mark with Goods

11. A trade mark must be registered for particular goods or classes of goods. The applicant shall in his application state goods included in one class only. If the applicant desires to register the same mark for goods falling in more than one class, he shall make a separate application in respect of each class, and each of such applications shall be treated for all purposes as separate and distinct applications; and the entries on the register in pursuance of such application shall for all purposes be deemed to relate to separate and distinct trade marks.

Coloured Trade Marks

12. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Further Restriction on Registration

13. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being calculated to deceive or otherwise, be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

REGISTRATION OF TRADE MARKS

Application for Registration

14. (1) Any person claiming to be the proprietor of a

trade mark may by himself or his agent apply to the Registrar for the registration thereof.

(2) The application must be made in the prescribed form, and must be accompanied by not less than three representations of the trade mark, and by a stereotype block of such representation.

(3) The applicant must state the particular goods or classes of goods in connexion with which he desires his trade mark to be registered.

(4) The application must be left with or sent by post to the Registrar.

(5) The date of the delivery or receipt of the application shall be endorsed thereon and recorded in the Registrar's Office.

(6) When an applicant for the registration of a trade mark is out of Nigeria at the time of making the application, he shall give the Registrar an address for service in Nigeria, and if he fails to do so the Registrar may refuse to proceed with the application until the address has been given.

Action in Regard to Application

15. (1) Subject to the provisions of this Ordinance, the Registrar may refuse such application as aforesaid, or may accept it absolutely or subject to conditions, amendments, or modification.

(2) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(3) An appeal under this section shall be made in the prescribed manner and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

Disclaimer

16. If a trade mark contains parts not separately registered by the proprietor as a trade mark, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may con-

sider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark, except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Advertisement of Application

17. Every application for registration of a trade mark under this Ordinance and a representation of such mark shall, as soon as may be after its receipt, be advertised by the Registrar in the Gazette, unless the Registrar refuses to entertain the application.

Opposition to Registration

18. (1) Any person may, within three months, or such further time, not exceeding nine months in all, as the Registrar may allow, of the advertisement of the application, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing and in duplicate, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within one month after the receipt of such notice, or such further time, not exceeding three months in all, as the Registrar may allow, the applicant shall send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant send such counter-statement the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition, and if such security is not given within fourteen days after such requirement was made, or such further time as the Registrar may allow, the opposition shall be deemed to be withdrawn.

(5) If the person who gave notice of opposition duly gives such security as aforesaid, the Registrar shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the Court.

(6) Where the opponent is out of Nigeria he shall, with the notice of opposition to registration, give the Registrar an address for service in Nigeria.

Cases: How Brought Before the Court

19. (1) When a case stands for the determination of the Court under the provisions of the last preceding section, the Registrar shall require the applicant within two months, or

such further time as the Registrar shall allow, to make a written application to the Court for an order that, notwithstanding the opposition of which notice has been given, the registration of the trade mark be proceeded with by the Registrar, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

(2) The applicant shall thereupon make his application or take such other proceedings as aforesaid, within the period of two months above named or such further time as the Registrar may allow, and shall also within the like period give notice thereof to the Registrar.

(3) If the applicant shall fail to make such application or to take such other proceedings, of which failure the non-receipt by the Registrar of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Costs

20. The Court shall have power in proceedings under the last two preceding sections of this Ordinance to award to any party such costs as it may consider reasonable, and to direct how and by what parties they are to be paid.

Date of Registration

21. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be the date of registration.

Certificate to Registration

22. The Registrar shall have a seal, and on the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Advertisement of Application

23. When an application for registration of trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the Gazette. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Limit of Time for Proceeding with Application

24. Where the registration of a trade mark is not com-

pleted within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant or to his agent (if any), treat the application as abandoned, unless it is completed before the expiration of fourteen days from such notice or of such further time as the Registrar may in special cases permit.

IDENTICAL TRADE MARKS

25. Except by order of the Court or in the case of trade marks in use before the thirtieth day of March, one thousand nine hundred and one, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival Claims to Identical Marks

26. Where each of several persons claims to be proprietor of the same trade mark or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court or have been settled by agreement in a manner approved by him.

Concurrent User

27. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations, if any, as to mode or place for use or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and Transmission of Trade Mark

28. A trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determined with that goodwill.

Apportionment of Marks on Dissolution of Partnerships

29. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business and the goodwill of such person does not pass

to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person ceasing to carry on business among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

30. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined Trade Marks

31. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that, when registered, it, and the trade mark of which it forms a part, shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall, for the purposes of this Ordinance, be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of Trade Marks

32. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

a) statements of the goods for which they are respectively used or proposed to be used; or

b) statements of number, price, quality, or names of places; or

c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of

trade marks so registered shall be deemed to be, and shall be registered as associated trade marks.

Assignment and User of Associated Trade Marks

33. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks: Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

DURATION AND RENEWAL OF REGISTRATION

Duration of Registration

34. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of Registration

35. The Registrar shall, on application made by the registered proprietor of a trade mark, in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed the expiration of the last registration.

Procedure on Expiry of Period of Registration

36. At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of Unrenewed Trade Mark

37. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless

it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF APPLICATIONS, OR OF THE REGISTER

Registrar May Correct Formal Errors in Applications

38. The Registrar may, on request in writing, accompanied by the prescribed fee—

a) correct any clerical error in or in connexion with an application for the registration of a trade mark; or

b) permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connexion with which he has desired the trade mark to be registered.

Correction of Register

39. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name—

(1) correct any error in the name or address of the registered proprietor of a trade mark; or

(2) enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) cancel the entry of a trade mark on the register; or

(4) strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Entry in Register of Assignments

40. Subject to the provisions of this Ordinance, where a person becomes entitled by assignment, transmission, or other operation of the law to a registered trade mark, the Registrar shall, on request made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered as proprietor of the trade mark in the register of trade marks, provided that any decision of the Registrar under this section shall be subject to appeal to the Court.

Application to Alter Registered Trade Mark

41. (1) The registered proprietor of any registered trade mark may apply to the Registrar for leave to add to or alter such mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse or grant leave on

such terms as he may think fit; but any such refusal or conditional permission shall be subject to appeal to the Court.

Prescribed Manner

(2) If leave be granted, the mark as altered shall be advertised in the prescribed manner; and the Registrar shall, on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Rectification of Register by the Court

42. (1) The Court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from the register kept under this Ordinance or by any entry made without sufficient cause in any such register, or by any entry wrongfully remaining on the register, make such order for making, expunging, or varying the entry as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(4) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(5) If any order of the Court rectifying the register is made, the Registrar shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with such order.

Trade Marks Registered Under Previous Enactments

43. No trade mark which is upon the register at the commencement of this Ordinance and which under this Ordinance is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Ordinance in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Ordinance to which he would not have been subject under the Ordinance then in force.

Non-user of Trade Mark

44. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connexion with such goods and there has in fact been no *bona fide* user of the same in connexion therewith, or on the ground that there has been no *bona fide* user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-use is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of Registered Proprietor

45. Subject to the provisions of this Ordinance—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipt for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of Proprietor of Trade Mark

46. Subject to the provisions of section 48 of this Ordinance and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connexion with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same or substantially the same trade mark in respect of the same goods, no right of exclusive use of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be Prima Facie Evidence of Validity

47. In all legal proceedings relating to a registered trade mark (including applications under section 42 of this Ordinance) the fact that a person is registered as proprietor of such

trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be Conclusive After Seven Years

48. In all legal proceedings relating to a registered trade mark (including applications under section 42 of this Ordinance) the original registration of such trade mark shall, after the expiration of seven years from the date of such original registration (or seven years from the commencement of this Ordinance, whichever shall last happen), be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 13 of this Ordinance: Provided that nothing in the Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the use by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the use of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such use being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section 27 of this Ordinance.

No Protection for Unregistered Trade Marks

49. No person shall be entitled to institute any proceedings to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been in use for not less than three years prior to the commencement of such proceedings, and has been refused registration under this Ordinance. The Registrar may, on request, grant a certificate that such registration has been refused.

Action for Infringement

50. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connexion with such goods by other persons.

No Interference with Bona Fide User of Name, or Description of Goods

51. No registration under this Ordinance shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business or the

use by any person of any *bona fide* description of the character or quality of his goods.

Action for Passing Off Goods

52. Nothing in this Ordinance shall be deemed to affect the rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificates of Validity

53. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court so deciding may certify the same, and, if it so certifies, then, in any subsequent legal proceeding in which such validity comes into question, the proprietor of the said trade mark, on obtaining a final order or judgment in his favor, shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Procedure Before the Court

54. Every application made to the Court under sections 41 and 42 and all proceedings thereunder shall be conducted in such manner as the Court may direct.

COSTS

55. In all proceedings before the Court under this Ordinance the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Certified Copies to be Admitted as Evidence

56. Printed or written copies or extracts, purporting to be certified by the Registrar, of or from any document, register, and other books filed or kept under this Ordinance in his office, shall be admitted in evidence in all Courts in Nigeria and in all proceedings without further proof or production of the originals.

Certificate of Registration to be Prima Facie Evidence

57. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Ordinance, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

Applications May be Sent by Post

58. (1) Any application, notice, or other document author-

ised or required to be left with, made, or given to the Registrar or to any other person under this Ordinance, may be sent by a registered letter through the post, and if so sent shall be deemed to have been so left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and registered at the Post Office.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of Discretionary Power by Registrar

59. Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Registrar May Apply to Attorney General for Directions

60. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Ordinance, apply to the Attorney General for directions in the matter.

POWER TO MAKE REGULATIONS AS TO FEES, ETC.

Power to Make Regulations

61. The Governor in Council may make Regulations, prescribe such forms, and generally do such things as he thinks expedient, subject to the provisions of this Ordinance—

a) for regulating the practice of registration under this Ordinance;

b) for classifying goods for the purposes of registration of trade marks;

c) prohibiting the registration in respect of any specified class of goods, unless such trade mark has been, and is, registered in the United Kingdom in respect of such goods;

d) for prescribing the fees payable in respect of applications and registrations and other matters under the Ordinance, and the mode of payment of the same;

e) generally for regulating all things by this Ordinance placed under the direction or control of the Registrar;

f) for altering or revoking the regulations made under this Ordinance.

SPECIAL TRADE MARKS

Standardisation, &c., of Trade Marks

62. Where any association or person undertakes the exam-

ination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connexion with such goods, the Registrar may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connexion with such examination and certifying. When so registered, such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Registrar.

TRADE MARKS REGISTERED IN GREAT BRITAIN

Registration of British Trade Marks

63. (1) Any person who has registered a trade mark in Great Britain shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall have the same date as the application for registration in Great Britain, provided that his application is made within four months from his applying for protection in Great Britain:

Provided that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in Nigeria.

(2) The use in Nigeria during the period aforesaid of the trade mark shall not invalidate the registration of the trade mark.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance: Provided that any trade mark the registration of which has been duly obtained in Great Britain may be registered under this Ordinance.

Powers of Customs Authorities to Detain Goods in Certain Cases

64. Any person who has duly registered his trade mark in respect of any goods in Great Britain may, by himself, his agent or representative in Nigeria, on giving notice in writing to the Comptroller of Customs, or other proper Officer of Customs that goods bearing a mark so nearly resembling his trade mark as to be well calculated to deceive are being imported into Nigeria, cause the said goods to be detained by such Comptroller or other proper Officer of Customs, until the rights of the

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matter have been determined according to law: Provided that any such informant shall reimburse to the Comptroller of Customs, or other proper Officer of Customs, all expenses and damages incurred in respect of such detention made on his information, and of any proceedings consequent on such detention.

OFFENCES

65. (1) If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offense, and shall be liable to imprisonment for seven years.

(2) Any person who represents any trade mark as registered, which is not so, shall be guilty of an offense, and liable to a fine of five pounds.

A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connexion with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

(3) If any person, without the authority of His Majesty, uses in connexion with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connexion with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and liable to a fine of twenty pounds: Provided that nothing in this subsection shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS

International Arrangements—Priority Registration

66. (1) If His Majesty is pleased by Order in Council to apply the provisions of Section ninety-one of the Imperial Act entitled "The Patents and Designs Act, 1907"* to the Colony,

* For provisions in question, see Great Britain.

then any person who has applied for protection for any trade mark in any foreign State with the Government of which His Majesty has made an arrangement under the said section for mutual protection of trade marks, shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall take effect from the same date as the date of the application in such foreign State.

(2) Every application for the registration of a trade mark under this section shall be made within four months from the date of the application for protection in such foreign State.

(3) Nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in Nigeria.

(4) The use in Nigeria during the period aforesaid of the trade mark shall not invalidate the registration thereof.

(5) The application for the registration of a trade mark under this section shall be made in the same manner as an ordinary application under this Ordinance: Provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(6) The provisions of this section shall apply only in the case of those foreign States with respect to which His Majesty shall from time to time by Order in Council declare the provisions of the aforesaid Section ninety-one of the Patents and Designs Act, 1907, to be applicable, and so long only in the case of each State as such Order continues in force with respect to that State.

Intercolonial Arrangements

67. (1) Whenever it appears to the Governor in Council that the legislature of any British Possession or Protectorate has made satisfactory provision for the protection in such Possession or Protectorate of trade marks registered in Nigeria, the Governor in Council may by Order apply all or any of the provisions of the last preceding section of this Ordinance, with such variations or additions as may seem fit, to trade marks registered in such British Possession or Protectorate.

(2) An Order in Council under this section shall, from a date to be mentioned in the Order, take effect as if its provisions had been contained in this Ordinance, but the Governor in Council may revoke such Order.

GENERAL

Infants, Lunatics, Etc.

68. If any person is, by reason of infancy, lunacy or other inability, incapable of making any affidavit or doing anything

required or permitted by this Ordinance or by any rules made under the authority of this Ordinance, then the guardian of such incapable person, or if there be none, any person appointed by any Court possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or any other person interested in the making of such affidavit or doing such thing, may make such affidavit, or an affidavit as nearly corresponding thereto as circumstances may permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall, for the purposes of this Ordinance, be as effectual as if done by the person for which he is substituted.

REPEAL

69. The Trade Marks Ordinance, 1910, and the Trade Marks Ordinance, 1910 (Amendment of) Ordinance, 1912, are hereby repealed.

NORWAY

LAW OF JULY 2, 1910

I. Registration of Trade Marks

a) Preliminary elements and attributes of the Mark

Section 1. Whoever is engaged in manufacture or trade, agriculture, mining, commerce or another enterprise, may by registration in accordance with the provisions of this law acquire the sole right to the use of particular trade marks in his industry.

The trade mark shall be applied for at the Office for the Protection of Industrial Property, for stated goods or classes of goods. See Secs. 11, (1) c, and 33.

Sec. 2. The trade mark must be adapted to distinguish in general commerce the goods of the applicant from the goods of others.

There may not exclusively constitute a mark the method of manufacture, the place and time of manufacture, or the kind, destination, contents or composition, price, number or weight of the goods.

It must not:

(a) Offend against the laws or be liable to give rise to scandal,

(b) Contain anything that obviously does not correspond with actual conditions and is liable to cause deception,

(c) Contain public coats-of-arms or marks.

Sec. 3. A trade mark may not be registered if the same mark already enjoys protection pursuant to valid registration for goods of the same or similar nature. By the expression "the same mark" there is for the purposes of this law to be also understood a mark that is so similar to another that it is liable to produce confusion in general commerce.

If the protection of a registered mark has expired, the registration of the same mark in favor of another for goods of the same or a similar nature may only be applied for after the lapse of two years.

Sec. 4. A trade mark will be registered for the term of 10 years counting from the day of application.

The registration may be renewed for 10 years at a time, counting from the lapse of the expiring term.

Sec. 5. Protection obtained through registration shall be to the effect that the proprietor of the mark is alone entitled

to apply the mark upon goods offered or intended to be offered for sale, or upon their packing (emballage) or to notices, prints, price lists, business letters, recommendations, bills and the like, or to offer for sale or to sell goods so marked.

By this protection no one shall be prevented from using his name or his signature as a mark for his goods.

SEC. 6. The right to the trade mark protected by registration may only be transferred in connection with the business in which the trade mark is used.

With the transfer of the business the right to the trade mark shall be vested in the new owner, if not otherwise stipulated.

SEC. 7. Whoever does not reside in Norway may only apply for the registration of a trade mark and enforce the rights derived from the registration if he has appointed a resident attorney made known to the Office for the Protection of Industrial Property, who shall represent him in all matters relating to the trade mark, and who may, in civil cases, be summoned by the court in his name.

SEC. 8. The protection shall cease if the renewal of protection is not applied for within the course of the expiring term of protection (see, however, Sec. 12, paragraph 2), or if the proprietor of the mark shall petition for the annulment of the mark.

SEC. 9. The registration may by decree be declared invalid in case the conditions requisite for the protection of marks according to the provisions of Secs. 1, 2 and 3 are not observed. See also Sec. 30 (2b) and Sec. 31.

Complaints may be lodged by any one who has an interest therein, provided it is a question of cases under Secs. 1 and 2; also by the Office for the Protection of Industrial Property.

If the proprietor of the mark and he who disputes the validity of the registration agree thereto, the question of validity may be finally decided by the Second Division of the Office for the Protection of Industrial Property. For this a fee of 30 kronen shall be payable.

The Second Division of the Office may, moreover, if it finds that the prescribed conditions for the protection were not or are not present, by decree declare the registration invalid if the proprietor of the mark makes no objection thereto. Such objection must be made at the latest within 3 months after the Office has furnished him with notice of the declaration of invalidity together with the grounds therefor.

SEC. 10. A registered trade mark may by decree be taken away from the proprietor of the mark:

(a) If the same mark, prior to the application for registra-

tion was known in corresponding business circles as the special designation of another enterprise for the same or similar goods (see Sec. 23),

(b) In case the owner of the mark was at the time of the application aware that the same mark had been employed by another for the same or similar goods before it had been applied for or used by him.

Revocation proceeding must be instituted by the rightful owner of the mark within two years after the date of the registration of the mark.

If the trade mark is taken away from the registered owner, the rightful owner shall be entitled to cause it to be registered for himself without regard to the concluding provision of Sec. 3.

b) Application for registration of marks and decision relative thereto

SEC. 11. The application shall contain:

(1) A petition addressed to the Office for the Protection of Industrial Property stating:

(a) The name or style and the domicile of the applicant;

(b) The business in which the mark is to be used;

(c) The goods or class of goods for which the registration is desired;

(2) A representation of the mark at the most 6.5 cm. in height and breadth, if it is a word mark, and 10 cm. for other marks, and if necessary a description of the mark;

(3) In case an attorney is appointed, a power of attorney accepted by him;

(4) Thirty kronen as a fee for the registration and publication. If the mark is to be registered in more than one class, 10 kronen must be paid for each additional class.

For each class for which the applicant applies for protection but does not obtain it, 10 kronen will be returned to him.

Before registration may take place the applicant must also present an electrotype and 10 impressions of the mark of the size mentioned in (2).

SEC. 12. The application for renewal must contain everything which is prescribed in the preceding paragraph under (1) and (2). A fee of 10 kronen is to be paid before the expiration of the term of protection for each class in which renewal is desired.

Upon payment of an additional fee of a total of 5 kronen the application for renewal may be filed within three months after the expiration of the term of protection.

If the application for renewal is not filed before the expiration of the term of protection, a warning shall be sent to the

proprietor of the mark. In case this is omitted legal consequences do not follow.

SEC. 13. An incomplete application shall be considered as completed in accordance with the provisions if the defect is removed in due time (Sec. 15).

However, the application shall be considered as not effected so long as a representation of the mark is not filed.

SEC. 14. The application shall be subject to the procedure of the Office for the Protection of Industrial Property (First Division) in accordance with the provisions in force in respect thereto.

SEC. 15. If the application does not fulfill the prescribed requirements, or if the conditions for protection according to Secs. 1, 2 and 3 are not considered to be present, the applicant will be advised thereof with a statement of the reasons, and with a summons to present himself within a determined period and, if necessary, to remove the stated defects.

SEC. 16. After the term has expired the Office shall decide with regard to the registration of the mark.

SEC. 17. The applicant may lodge an appeal with the Office (Second Division) from a decision to reject.

The appeal must be lodged within 2 months after delivery of the official decision.

A fee of 20 kronen shall be payable for the appeal. If this is not paid before the expiration of the term, the appeal shall be considered as not having been effected.

SEC. 18. The decision of the Second Division of the Office refusing the registration shall be final.

SEC. 19. If the registration is approved, the Office shall order the registration of the mark in the Trade Mark Register, effect publication in regard to the registration in the *Official Journal* and in the journal mentioned in the Law relating to the Office for the Protection of Industrial Property, and issue a certificate of registration for the applicant.

In the case of renewal of registration, publication shall be effected and the certificate issued in similar manner.

c) Registration of Marks

SEC. 20. The Trade Mark Register shall show the date of the application, its subject, and the name and domicile of the applicant, and, if necessary, of his attorney.

If the protection for a mark ceases, or if the registration is deemed or declared invalid, or withdrawn from the owner, this shall be noted in the Register and published.

Changes in respect to the personality of the owner of the

mark or his attorney shall also be noted and published if due notice thereof is given the Office.

So long as such changes are not applied for, complaints relative to the mark may be lodged against the owner or his attorney noted in the Register and communications will be directed to them by the Office.

SEC. 21. Anyone shall be entitled to have the Registrar and the application, with the documents attached thereto, relative to a registered trade mark laid before him for inspection, and to receive a certified copy thereof. However, the reproduction of the registered trade mark itself may not be demanded.

II. FALSIFICATION OF MARKS; ILLEGAL DESIGNATIONS OF COMMERCIAL ESTABLISHMENTS

SEC. 22. Whoever unlawfully applies to goods offered or intended to be offered for sale, their wrappers or the various objects mentioned in Sec. 5, (a) the mark of another protected by registration for the same or a similar kind of goods, (b) the name or the style of another, (c) anything which in this connection is apt to cause confusion in general business circles, or who unlawfully offers for sale or sells goods so marked may be enjoined by the injured party.

If he has acted with knowledge, he will be punished with a fine or imprisonment not to exceed three months. In this case, as also if he has acted negligently, he shall be obliged to make amends for the damages. Public prosecution shall take place only upon demand of the injured party.

SEC. 23. Goods held or intended for sale, the wrapping of same or the various articles mentioned in Sec. 5 may not illegally be provided with a mark or a semblance that in the respective business circles is known as the special designation of another enterprise for goods of the same or a similar nature, nor may goods so marked or gotten up be held for sale or sold, insofar as there is danger thereby of creating confusion in regard to the establishment in which the goods originate.

Whoever acts in contravention of this may be enjoined by the injured party.

If he has acted knowingly, he will be punished with a fine, and he shall be bound to make amends for the damage. Public prosecution shall only take place upon the demand of the injured party.

SEC. 24. Whoever applies to goods held or intended to be held for sale, to their wrapping or to the various objects mentioned in Sec. 5, his name or his firm in such manner that the designation is apt to cause confusion with a designation for goods which is rightfully employed by another for goods of

the same or a similar nature, or who holds for sale or sells goods so marked, may be enjoined by the injured party.

If he intended to create such confusion he shall be punished by a fine, and shall be obliged to make compensation for the damage. Public prosecution shall only take place upon the demand of the injured party.

SEC. 25. Goods held or intended to be held for sale, the wrapping of same or the various objects mentioned in Sec. 5, may not be provided with an incorrect statement of the place of origin of the goods or a statement which in this connection is adapted to create confusion, nor may goods so marked be held for sale or sold. Whoever acts in contravention of this may by decree be forbidden from making use of the statement in holding the goods for sale.

If he has knowingly made use of the incorrect statement he may be obliged to compensate for the damages.

If he intended to deceive in regard to the nature, the contents, the construction or value of the goods he shall be punished with a fine.

Statements of the place that are intended according to commercial usage to be only a statement of the nature of the goods, but not their origin, shall not fall under the provisions of this paragraph.

The King may, however, pursuant to conventions with foreign States, decide that the importation of such goods as bear statements such as mentioned in the preceding paragraph, shall only be allowed if the goods are accompanied by sufficient declarations in respect to their genuineness and their origin in the country or the portion of the country in question. In like manner the King may forbid the holding for sale and the selling of goods in the Kingdom bearing statements such as mentioned, in case the goods are not genuine and do not originate in the country or the part of the country in question.

Offences against prohibitions issued in accordance with the preceding paragraph shall be punished by a fine.

SEC. 26. Whoever shall give to his business or his enterprise a name that is apt to cause confusion with a name that another has already rightfully employed for his business or his enterprise of the same or a similar nature, may be enjoined by the injured party.

In case such confusion was intended, he shall be punished by a fine and obliged to compensate for the damages. Public prosecution shall take place only upon demand of the injured party.

SEC. 27. Whoever has unlawfully made use of a designa-

tion for goods or a business shall, upon petition of the injured party, be obliged to alter the designation or to remove it. If this cannot be done, the articles in question may be confiscated.

The confiscated articles may, upon agreement between the defendant and the injured party, be transferred to the latter in settlement of the compensation due him for damages.

SEC. 28. Complaints under Sec. 9 of this law shall be within the jurisdiction of the *Kristiania Byret*. The term for summons shall be four weeks, without regard to the domicile of the defendant. The Office for the Protection of Industrial Property shall receive notice of the lodging of complaints through its President.

SEC. 29. If the party accused of infringement of a registered trade mark bases his claim to acquittal upon the fact that the registration is invalid, the court hearing the case must, upon demand, grant him the necessary postponement to obtain a decision in regard to the invalidity of the registration.

III. MISCELLANEOUS PROVISIONS

SEC. 30. Only those that own a business within the Kingdom in the sense of Sec. 1 shall have a claim to protection under this law.

The King may, however, upon the condition of reciprocity, conclude agreements with foreign States whereby this protection will also be granted to those who own such a business outside of the Kingdom.

In that case, with respect to trade marks that are registered, the following shall be effective:

1. The application must be made in the Kingdom in prescribed manner, and the application, in order to be of effect, must be accompanied by a certificate that the mark was applied for in prescribed manner in the foreign State. The trade mark will not be protected under broader conditions nor for a longer time than in the foreign State.

2. Upon the condition of reciprocity for Norwegian trade marks, it may be established:

(a) That the mark shall be registered and protected in this country just as it is duly registered in the foreign State, provided that it does not offend against morals or public order; and

(b) That he, who has in prescribed manner applied for the registration of a mark in the foreign States in question, shall be entitled to make application for it here in the Kingdom before the expiry of a determined period after the first application effected in a State adhering to the agreement, without intervening circumstances preventing the effectiveness of the said application.

SEC. 31. Whoever, at a national or international exposition in the country, has exhibited goods which are provided with a trade mark, is entitled to make application for registration of this mark within six months after the opening of the exposition without the effectiveness of the application being prevented by circumstances that shall have occurred after the goods provided with the mark were placed for inspection in the exposition room.

Conditional upon reciprocity, the King may conclude agreements with foreign States whereby a similar provision relative to international expositions in those States may be put into effect.

SEC. 32. A fee to be determined by the King is to be paid for inscription in the Register of Marks under the provision in Sec. 20, 3, and for certified abstracts and copies.

SEC. 33. More detailed provisions which, relative to the regulation of the classes of goods and otherwise, are necessary for the execution of this law, will be issued by the King.

SEC. 34. This law shall become of effect on January 1, 1911. From that time on the laws of May 26, 1884, and May 31, 1900, shall stand repealed.

However, a trade mark that was registered before the entry into force of this law may not be declared invalid or withdrawn from the proprietor provided it meets the requirements of the former law.

A registered trade mark that is valid, according to the former law, may be renewed without regard to the provisions of this law relative to the validity of marks.

PALESTINE

ORDINANCE OF DECEMBER 8, 1921

1. In this Ordinance the term "Trade Mark" shall mean a mark used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale.

2. There shall be kept for the purposes of this Ordinance, a book called the Register of Trade Marks with the names and addresses of their proprietors, notifications of assignment, and transmissions, disclaimers, conditions, limitations and such other matters relating to the trade marks as may from time to time be prescribed. The Register shall be kept at the Law Courts, Jerusalem or at such other place as may be appointed by the High Commissioner by Notice published in the Official Gazette. The Register shall be under control and management of a Registrar appointed by the High Commissioner.

3. The Register kept under this Ordinance shall at all convenient times be open to inspection by the public subject to such regulations as may be prescribed, and certified copies of any entry in such Register shall be given to any persons requiring the same on payment of the prescribed fee.

4. A person desiring to have the exclusive use of a trade mark in order to distinguish goods of his own production, manufacture, working, selection, certification or which he deals with or offers for sale may apply for registration in accordance with the provisions of this Ordinance.

Trade marks capable of registration must consist of characters, devices or marks or combinations thereof which have a distinctive character.

Trade marks may be registered with limitations as to colours to be used thereon.

A Trade Mark must be registered in respect of particular goods or classes of goods.

5. The following are not capable of registration as trade marks:

(1) Public armorial bearings, crests, insignia or decorations of Palestine or of the Mandatory States or Foreign States or nations unless authorised by the competent authorities;

(2) Official Hall Marks or signs indicating an official warranty; unless put forward or authorised by the competent authority owning or controlling the mark;

(3) Marks which are identical with or similar to the National Flag, the Military or Naval flags of Palestine or commendatory medals or badges, or national military or naval flags of the Mandatory States or of Foreign Countries;

(4) Marks which are or may be injurious to public order or morality or which are calculated to deceive the public; or marks which encourage unfair trade competition, or contain false indications of origin;

(5) Marks consisting of figures, letters or words which are in common use in trade to distinguish or describe goods or classes of goods or which are directly descriptive of their character and quality; words whose ordinary signification is geographical;

(6) Marks which are identical with or similar to the sign of a Red Cross or Red Crescent on a white ground or the designation or characters of the "Red Cross" or the "Geneva Cross";

(7) Marks identical with or similar to emblems of exclusively religious significance;

(8) Marks which are or contain the portrait, name or the trade name of a person, or the name of a body corporate or of an association, unless the consent of the person or persons concerned has been obtained;

(9) A mark identical with one belonging to a different proprietor which is already on the register in respect of such goods or description of goods, or so nearly resembling such trade mark as to be calculated to deceive; provided nevertheless that this provision shall not apply to an application made within one year from the date at which this Ordinance comes into force for the registration of any trade mark registered in Turkey prior to the 11th day of November, 1918, in accordance with the provisions of the Ottoman Law then in force and which at that date was still so registered.

6. The Registrar shall equally have power to register under this Ordinance trade marks belonging to associations the existence of which is not contrary to the law of their country of origin, even if such associations do not possess an industrial or commercial establishment.

Trade marks registered under the provisions of the Public Notice No. 136 of the 30th day of September, 1919, shall from the date on which this Ordinance comes into force, be deemed to be registered only under this Ordinance and the date of registration of such marks shall for the purpose of this Ordinance be deemed to be the date of registration under the same Public Notice.

7. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) The Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, subject always to the provisions of this Ordinance.

Any refusal by the Registrar to register a mark shall be subject to appeal to the Court of Appeal.

8. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions and limitations, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions and limitations subject to which the application has been accepted.

9. (1) Any person may, within six months from the date of an application for the registration of a trade mark, file with the Chief Clerk of the Court of Appeal a notice of opposition to such registration.

Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(2) Copies of the notice of opposition shall be lodged with the Registrar and served upon the applicant for registration.

(3) The filing and service of the notice of opposition shall constitute the commencement of proceedings before the Court of Appeal for the determination of the validity of the opposition. The Court may reject or accept the opposition absolutely or may direct that registration shall only be allowed subject to such conditions, amendments, modifications, or limitations as to mode or place of user as under the circumstances it may think fit.

(4) A certified copy of the judgment shall be lodged with the Registrar by the successful party.

10. (i) If the time for opposition has elapsed without any person opposing or after an opposition has been decided in favour of the applicant the Registrar shall at the instance of the applicant register the mark. The mark when registered shall be registered as on the date of the application and such date shall be given for the purposes of this Ordinance to be the date of Registration.

(ii) On the registration of a Trade Mark the Registrar shall issue to the applicant a certificate in the prescribed form

of the registration of such trade mark, under the hand of the Registrar.

11. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

12. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor otherwise than under Art. 4 (8), the Registrar shall refer the issue to the Court of Appeal which in determining the rights of the parties shall have regard to the date of the registration in the country of origin, and the priority of user of the mark in Palestine.

13. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determined with that goodwill.

14. The period of duration of trade mark rights shall be twenty years from the date of registration, but may be renewed from time to time in accordance with the provisions of this Ordinance.

15. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of twenty years from the expiration of the original registration or of the last renewal of registration as the case may be.

16. (1) Application for the cancellation of the registration of a trade mark may be made by any person interested on the following grounds:

(i) That the mark is not entitled to registration within the provision of Arts. 4, 5, 6.

(ii) That the registration of the mark creates an unfair competition in respect of the applicant's right in Palestine; or has been fraudulently obtained with a knowledge of the applicant's rights to the ownership of the mark.

(iii) That there is no bona fide user of the trade mark in connection with the goods for which it is registered and there has not been any such user during the preceding two years.

Application for cancellation under sub-sections (i) and (ii) must be made within five years of the registration of the mark.

(2) Application for cancellation shall be made to the Court of Appeal. A certified copy of any judgment of the Court ordering cancellation shall be lodged with the Registrar by the person obtaining such judgment.

17. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission or other instrument affecting the title. Any decision of the Registrar under this Article shall be subject to appeal to the Court of Appeal.

(2) Except in cases of appeals under this Article, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of the subsection (1) aforesaid shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

18. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same in such terms and subject to such limitations as to mode or place of user as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court of Appeal.

If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

19. Subject to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the right to the exclusive use of such trade mark upon or in connection with the goods in respect of which it is registered. Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Registrar) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

20. In all legal proceedings relating to a registered trade mark the fact that a person is registered as proprietor of such

trade mark shall be prima facie evidence of the validity of the original registration of such trade mark and all subsequent assignments and transmissions of the same.

21. Subject to the provisions of this Ordinance the Registrar may with the approval of the High Commissioner from time to time make such rules, prescribe such forms, and generally do such things as he may think expedient—

(a) for regulating the practice under this Ordinance;

(b) for classifying goods for the purpose of registration of trade marks;

(c) for making or requiring duplicates of trade marks and other documents;

(d) for securing and regulating the publishing and selling or distributing in such manner as the Registrar thinks fit, of copies of trade marks and other documents;

(e) generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the Registrar.

Rules made under this Article shall take effect from the date of their publication in the Official Gazette and shall, whilst in force, be of the same effect as if they were contained in this Ordinance.

22. There shall be paid in respect of applications and registrations and other matters under this Ordinance such fees as may be prescribed by the rules.

23. (1) Any person who represents a trade mark as registered, which is not so, shall be liable for every offence to a fine not exceeding £50.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark.

(3) No person shall be entitled to institute any proceedings to recover damages for the infringement of a trade mark not registered in Palestine.

(4) In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered and of any trade marks or get-up legitimately used in connection with such goods by other persons.

(5) No registration under this Ordinance shall interfere with any genuine use by a person of his own name or place of business, or that of any of his predecessors in business or the

use by any person of any genuine description of the character or the quality of his goods.

(6) Nothing in this Ordinance shall be deemed to affect the right to bring an action against any person for unfair competition in respect of his trade or the remedies in respect thereof.

(7) Any person who with intent to deceive commits or attempts to commit or aids or abets any other person in committing any of the following acts shall be guilty of an offence against this Ordinance and shall be liable upon conviction to imprisonment for a period not exceeding one year and with a fine not exceeding £100 or with one only of these penalties:

(a) makes use of a trade mark registered under this Ordinance or of an imitation of such trade mark upon the same class of goods as that in respect of which the mark is registered;

(b) sells, stores for the purposes of sale, or exposes for sale, goods bearing a mark the use of which is an offence under sub-section (a);

(c) uses a mark duly registered by another person under this Ordinance for the purpose of advertising in the public press or in any other manner, goods of the same classification as those for which registration has already been obtained by another person;

(d) makes, engraves, prints, or sells, any plate, die, block or other representation of a duly registered mark or any other imitation thereof for the purpose of enabling any person other than the registered proprietor of such mark to make use of such mark or an imitation thereof in connection with goods of the same classification as those for which registration has already been obtained by another person;

(e) makes, packs or wraps, sells, stores for the purpose of sale, or exposes for sale, goods so got up, packed, wrapped or otherwise prepared as to lead intending purchasers to believe that they are the goods of another manufacturer or are of an origin other than their true origin.

For the purpose of this sub-section it shall be immaterial whether the goods, the packing, wrapping or get-up of which is imitated bear a duly registered trade mark or not;

(f) imports any goods bearing a mark which would constitute an infringement of a duly registered mark, or imports goods so got up, wrapped, packed or prepared as to enable the goods to be passed off as the goods of another manufacturer.

In all such cases in lieu of or in addition to penalties hereinbefore provided, the Court shall have power to grant an injunction against a continued repetition of any offence committed under this Article.

(8) The Court before which any person charged under the aforesaid section is brought may order that all goods, wrapping, packing and advertising material, and blocks, dies and other apparatus and material for printing the mark or packing, wrapping, advertising or other material in respect of which the offence is committed be confiscated or destroyed.

24. If at any time the Government of Palestine shall become a party to an international arrangement for the mutual protection of trade marks, then any person who has applied for protection for a trade mark in any State which is a party to such arrangement shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants and the registration shall have the same date as the date of registration in such State:

Provided that:

(a) the application is made within four months from the application for protection in such State;

(b) nothing in this Article shall entitle the proprietor of the trade mark to recover damages for infringement happening prior to the date on which the trade mark is registered in Palestine.

The registration of the trade mark shall not be invalidated by reason of the use of the trade mark in Palestine during the said period of four months.

25. The application for registration of a trade mark under Art. 24 shall be made in the same manner as an ordinary application under this Ordinance.

Provided that any trade mark the registration of which has been duly applied for in the country of origin may, if such trade mark is not contrary to public policy, be registered under the Ordinance.

26. The provisions of Arts. 24 and 25 shall apply only to the case of such State with respect to which an Order in Council by the Mandatory State declares them to be applicable.

27. (i) From the date at which this Ordinance comes into force the registration and protection of trade marks in Palestine shall be governed by it to the exclusion of any existing Ottoman Laws.

(ii) The Public Notice No. 136 of 30th September, 1919, is duly repealed.

28. This Ordinance shall come into force on the 1st day of January, 1922.

29. This Ordinance may be cited as the Trade Marks Ordinance, 1921.

PANAMA

LAW NO. 24 OF NOVEMBER 14, 1908*

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ARTICLE 15. There shall be understood as a mark of manufacture any word, phrase, or sign, or combination of these elements, employed for distinguishing or determining a special product destined for industry or for commerce; and as a mark of commerce, a word, phrase, or sign, or combination of these elements, used as a distinctive for an article of commerce intended for an individual or for a commercial house.

ART. 16. Any Panamanian or foreigner, owner of a mark of manufacture or of commerce, may acquire the exclusive right to use it within the Territory of the Republic on fulfillment of the formalities of registration at the respective Secretariat, for which there shall be observed the following:

1) The petitioner shall apply in person or through attorney at the Secretariat, making application for the registration of the mark, there being stated plainly the distinctive sign that constitutes it, the product or article to which it relates and the place at which this latter is manufactured.

2) The application shall be drawn up on stamped paper of the first class and with it there shall be included a receipt from the Treasury General of the Republic, in which it shall be shown that the registration fee—which shall be twenty-five balboas (B. 25.00)—has been paid, and three facsimiles of the mark or its representation by means of a drawing or engraving. Two of the said facsimiles shall bear an adhesive stamp of the first class and shall be signed on the reverse by the party interested, with annotation of the date of the application.

PARAGRAPH. When it is a matter of the registration of marks of manufacture or of commerce intended for articles of the country, there shall be paid only one-half of the fee indicated in this article.

3) The application shall be published two consecutive times in the official periodical; if ninety days shall have passed following the first publication, the registration of the mark shall be effected. To the applicant there shall be delivered a certificate of registration, which shall constitute the deed of ownership of the respective mark. This certificate shall be drawn up on stamped paper of the first class and shall be published for two consecutive times in the official periodical.

ART. 17. The ownership of a mark of manufacture or of

*Matter not relating to trade marks is omitted.

commerce shall be acquired for the term of ten years; however, it may be renewed indefinitely for like terms if it be correspondingly solicited and there be paid the renewal fee, which will be twenty balboas (B. 20.00).

PARAGRAPH. There shall be paid only the half of this sum when it is a question of articles manufactured within the country.

ART. 18. For the renewal of a mark of manufacture or of commerce, it shall be necessary to make application within the term of the thirty days immediately preceding and the thirty days following the date of the expiration of the right acquired; this term having expired without the renewal having been applied for, the right acquired shall fall into caducity.

ART. 19. The ownership that is acquired through the registration of a mark of manufacture or of commerce shall alone establish the right of usage thereof; but, in no case, the exclusive right to the manufacture or sale of the product or object.

ART. 20. For each mark of manufacture or of commerce that it is desired to register, there must be filed an application.

ART. 21. There shall not be permitted the registration of a mark of manufacture or of commerce when it is to be used in the exploitation of illicit articles.

ART. 22. It is prohibited to make use in marks of manufacture or of commerce of the following:

1) Designs, engravings, or vignettes, contrary to morality; and

2) Marks identical or substantially similar to those that shall have been registered, when it is intended to protect therewith products or objects protected by the latter.

ART. 23. If thirty days following the expiration of the period of reclamation have elapsed without the party interested having filed the papers or documents necessary for the issuance of the certificate, the mark shall be declared abandoned, in which case, and to effect registration, the interested party shall file a new application and comply with all the formalities, as well as effect anew the payment of the fiscal fees.

ART. 24. Powers of attorney granted abroad for soliciting the registration of a mark of manufacture or of commerce must be authenticated by the respective Minister or Consular Agent of the Republic at the place at which they are granted, or by the Minister or Consular Agent of a friendly Nation, in case Panama has not accredited such officials at the place in which the principal resides.

ART. 25. A mark of manufacture that belongs to a foreign individual or company, not resident in the Republic, may not be

registered in this country unless it shall have been previously registered, and regularly, in the country of its origin, which shall be evidenced by an authentic copy of the deed issued abroad, which must be included with the application.

ART. 26. The individual or the company that first has made use of a mark of manufacture or of commerce is the owner that shall have the right to acquire the ownership thereof. In case of dispute between two, or more, holders of the same mark, the ownership shall pertain to the first possessor, and, if the period of possession shall be the same, to the first that shall have applied for the registration at the respective Office. .

ART. 27. When a person shall make undue use of a mark of manufacture or of commerce, already legally registered by another person or company, and the possessor thereof shall give notice of that abuse to the respective Secretariat, proving his better right, the Executive Power shall impose upon the delinquent party the first time a fine of fifty balboas (B. 50.00) which shall be paid into the National Treasury. In case of repetition, it shall impose upon him a fine of one hundred balboas (B. 100.00) which shall be paid also into the National Treasury, and in every case the articles and products shall be confiscated and placed at the disposal of the owner of the mark.

ART. 28. Marks of manufacture may be assigned only with the establishment producing the objects that they serve to distinguish. In consequence, the transfer of a mark shall imply in itself the exploitation of products protected thereby. The assignment shall be subject to no special formality, and shall be evidenced in conformity with Common Law, but it must be registered in the respective Secretariat, without which requisite it shall be without effect as regards third parties.

ART. 29. The application being published in the official periodical, to the end that those believing themselves rightfully entitled thereto may avail themselves opportunely of their rights, and the opposition in writing having been presented in due time, the respective Secretariat shall issue the corresponding Resolution, without prejudice to appeal to the Judicial Power by the person or persons that may not be satisfied therewith.

ART. 30. The registration of a mark of manufacture or of commerce shall be effected without previous examination with reference to the utility of the object and of the quality and properties of the goods for which it is intended, subject to the sole responsibility of the applicant and without prejudice in every case to the rights of third parties.

LAW NO. 47 OF JANUARY 29, 1911*

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ARTICLE 6. In addition to the things that must be filed with applications for the registration of marks in accordance with Art. 16, No. 2, of Law No. 24 of 1908, there shall be included one other facsimile of the corresponding mark and a *cliché* (electrotype) for reproducing the same.

ART. 7. (*Transitory*) Applications for registration that are filed prior to the thirtieth of June of the present year (1911, *Ed.*) shall be accepted even though they do not come accompanied by the *cliché* to which the preceding article refers, provided that they are in compliance with the other legal requirements; however, the parties interested shall remain obliged to furnish the said *cliché* within the term of four months, as a guarantee of which they shall deposit with the Treasury General of the Republic the sum of five balboas (B. 5.00).

ART. 8. Applications for the registration of marks that show names, corporate denominations, portraits, or facsimiles of signatures that are not those of the persons that solicit registration, must be filed with the corresponding authorization from the owners thereof or their heirs, in which it must be expressly evidenced that they are authorized to use such names, portraits, corporate denominations, or facsimiles of signatures. Registrations shall be without value that are effected in contravention of the provisions of this article.

ART. 9. Marks shall not be registered that solely consist in statements with reference to the class, date, and place of manufacture, or with respect to the quality, purpose, and conditions of price, and quantity and weight of the goods.

ART. 10. Any mark whose renewal shall not have been solicited in opportune time (Art. 18 of Law No. 24 of 1908) shall be cancelled; however, during the two following years, only the person in whose favor it shall have been registered shall have the right to register it anew.

ART. 11. Notice shall be given in the official periodical with reference to every cancellation of a mark, there being inserted the description of the mark or, if this be impossible, it shall be reproduced. . . . .

ART. 12. Applications for registration shall contain a detailed description of the mark, and they shall state—should such be the case—whether all the elements that it contains in the form in which it appears constitute the mark, or whether the party interested claims for himself stipulated elements inde-

* Matter not relating to trade marks is omitted.

pendently, and the form in which he considers these as his property. Said description shall be entered in the corresponding certificate, to which there shall be pasted, under the seal of the Office, a facsimile of the mark.

ART. 13. By itself, the name of a merchant or that of a mercantile or industrial society shall constitute a property. With respect to the title or denomination of a house that traffics or trades at any commercial point of the Republic, it is possible to have a like right, but solely for the respective locality, through registration in conformity with the provisions corresponding to the registration of National marks.

ART. 14. Juridical persons shall have the same rights as individuals with respect to the ownership of their names, and shall be subject to the same conditions as the latter.

ART. 15. The exclusive right to the use of a name considered as industrial property shall expire with the closing of the house or factory, or with the cessation of the industry to which the right refers.

ART. 16. Usurpation of the right of ownership of a mark of manufacture or of commerce shall be punished with a fine of from twenty-five to two hundred and fifty balboas (B. 25.00 to B. 250.00), or with imprisonment of from one to three months, in addition to the confiscation of the article, as provided for in Art. 24 of Law No. 24 of 1908.

ART. 17. For the undue use of marks of manufacture and of commerce there shall be responsible the manufacturer that applies the mark, as well as the importer and seller. In consequence, the following shall be liable for the penalties stipulated:

1) Those that manufacture or counterfeit in any way a mark of manufacture or of commerce;

2) Those that affix to their own products or articles of commerce a mark identical with or substantially similar to a mark that belongs to another;

3) Those that in any way shall make use of marks in which there is patently manifested the intention to imitate, through any interpretation, a mark registered in favor of other persons;

4) Those that knowingly sell, offer for sale, or consent to sell or place in circulation, articles with false labels or designations, either with respect to their nature, quality, quantity, number, weight, or measure, or as regards the country of origin or manufacture, or use the denominations "Marca Registrada" or the equivalent initials "M.R.", when the mark shall not have been registered;

6) Those that knowingly sell or offer for sale articles with the false indications to which the preceding paragraph refers.

ART. 18. In cases of repetition the penalty shall be doubled.

ART. 19. To constitute infringement or usurpation of right, it shall suffice that the false mark shall have been affixed to a single object.

ART. 20. Registered marks that are affixed to articles different from those designated in the corresponding certificate of registration shall be reputed as not registered.

ART. 21. To bring action for falsifications or imitations of a registered mark, it is not necessary to be the owner thereof. Any manufacturer or consumer that shall consider himself prejudiced by a falsification or imitation or fraud—as regards those mentioned in the present law—shall have the right to denounce and prosecute same. When the complainant is not the owner of the mark that has been falsified, seizure shall be made in behalf of the Public Treasury.

ART. 22. In case of seizure, the marks that shall be found not to have been used shall be destroyed, and those that are affixed to the corresponding goods shall be destroyed or rendered void.

ART. 23. In the case of opposition to the registration of a mark, the Executive Power shall make decision within the shortest possible time, unless it be indispensable to await proofs that will accredit the facts on which the opposer bases his action, in which case there shall be indicated a prudential term, at the discretion of the Executive Power.

ART. 24. In case of the undue use of a mark of manufacture or of commerce, the injured party, for himself or through intermediary of an attorney, shall lodge his complaint before any Examining Magistrate, who, within the shortest time possible, shall repair to the establishment, store, or place, in which is found the article to which the mark has been illegally affixed; he shall take an inventory thereof, having it appraised, if necessary, by experts to be appointed and sworn in by him in the same act, and he shall notify the owner or his representative that the said article remains under embargo until the case shall be decided, or he shall place it in the possession of another person, if he so deems expedient. The complainant shall be obliged to deposit with the respective Receiver's Office or the Administration of Finance, as guarantee of not acting in bad faith and for the purpose of being responsible for damages, a sum equal to the third part of the value of the article. If he shall not effect the deposit within the two days following, saving the case of *force majeure* or fortuitious event duly proved, the action shall cease; and, if it shall be proven that the complaint was unfounded, there shall be imposed upon the complainant a fine of

from fifteen to fifty balboas (B. 15.00 to B. 50.00), and, in addition, he shall be obliged to pay to the owner of the article the damages caused, according to the equitable estimation of appraisers.

ART. 25. There having been carried out the procedure to which the preceding article refers, the official before whom the complaint shall have been lodged shall draw up the corresponding indictment, shall duly authenticate it, and remit it to the respective Circuit Judge, who shall give his decision, in accordance with law, in primary instance.

ART. 26. . . . Certificates of registration of marks of manufacture and of commerce shall be issued on printed forms of fine and enduring linen paper of superior quality. On said documents there shall be affixed in National Revenue stamps the value of the corresponding stamped paper.

ART. 27. The Executive Power, if it be necessary, shall classify articles of commerce for the purpose of their protection by means of marks of manufacture and of commerce. The Executive Power is also authorized to make good the deficiencies that in practice may be noted in the laws concerning . . . the registration of marks, as well as to regulate them, should there be occasion for such, and modify and supplement them in urgent cases.

PARAGUAY

LAW OF JULY 6, 1889

TITLE I

Ownership of Trade Marks

Article 1. Marks of manufacture or of commerce shall be: the denominations of objects and the names of persons under a particular form, emblems, monograms, engravings or prints, seals, vignettes and reliefs, letters and numerals with special design, the containers or wrappings of objects, and any other sign with which it is desired to distinguish the manufactures of a factory or the objects of a line of business.

Art. 2. A mark may be affixed to the containers or wrappers of the objects that it is desired to distinguish.

Art. 3. There shall not be considered as marks of manufacture or of commerce:

1) Letters, words, names or distinctives, that the State uses or might use;

2) The form that is given to the goods by the manufacturer;

3) The color of the goods;

4) Terms or locutions that have passed into general use;

5) Designations usually employed for indicating the nature of the goods, or the class to which they belong;

6) Designs or expressions contrary to morality.

Art. 4. The absolute ownership of a mark, as well as the right to lodge opposition against the use by any other person that may, directly or indirectly, produce confusion between the goods, shall belong to the industrial or merchant that shall have fulfilled the requisites demanded by this law.

Art. 5. The exclusive ownership of a mark may only be acquired with relation to industry of the same class.

Art. 6. The use of a mark is optional.

Nevertheless, it may be obligatory, when the necessities of public expedience so require.

Art. 7. The ownership of a mark shall pass to the heirs and it may be transferred by contract or by disposition of last will.

Art. 8. The assignment or sale of the establishment shall comprehend that of the mark, save stipulation to the contrary, and the assignee shall have the right to make use of the mark that designates it, even if it be a name, in the same way as the

assignor did, without restrictions other than those expressly imposed in the deed of sale or assignment.

ART. 9. The transfer of a mark shall be recorded in the Office in which it was registered, to the end of acquiring the right to use it.

ART. 10. There shall be considered as a mark in use, for the effects of the ownership that this law accords, only that for which the Office has granted the corresponding certificate.

ART. 11. The protection of the rights of the manufacturer or merchant with respect to the exclusive use of a mark shall endure only for ten years, which may be extended indefinitely for other equal terms on the fulfillment in every case of the necessary formalities and on the payment each time of the fee that is mentioned later.

TITLE II

FORMALITIES FOR ACQUIRING OWNERSHIP OF A MARK

ART. 12. Any person that shall desire to obtain the ownership of a mark of manufacture or of commerce shall petition it from the Board of Public Credit,* to which end there shall be created an Office of Patents and Marks of Manufacture and of Commerce, the said bureau being placed under the supervision of the Board of Public Credit.

ART. 13. The application for obtaining a mark must be accompanied by:

1) Two fascimiles of the mark or of the distinctive sign of which it is desired to make use;

2) A description in duplicate of the mark or of the sign, if it is a matter of figures or of emblems; there having to be indicated the class of objects for which they are intended and whether they are to be affixed to the products of a factory or to an article of commerce;

3) A receipt that evidences the payment made to the Treasury of the Board of Public Credit, through intermediary of the Office of the Auditor General of the Nation, of the amount of the fee fixed in Art. 19;

4) A formal power, in case the applicant does not appear in person.

ART. 14. Applications that are presented shall be entered by means of a brief statement that shall give a résumé of their contents and the date and hour of their presentation, in a book

* The Law of August 8, 1892, abolishing the Board of Public Credit, left the Office of Patents and Marks of Manufacture and Commerce under the supervision of the General Treasury of the Nation, and on June 5, 1905, it was placed under the supervision of the Office for the Collection of Internal Revenue.

whose sheets shall be numbered and rubricated by the Minister of Finance.

This entry shall be signed by the President of the Board of Public Credit, or, in his absence, by a member of the same bureau, the Secretary, and the applicant, there having to be given to the latter a copy thereof, if he shall ask for same, on stamped paper of fifty centavos.

ART. 15. Priority as regards the ownership of a mark shall be granted in accordance with the day and the hour on which the application shall be presented at the Office.

ART. 16. The certificate of the mark that the Patent Office gives shall consist of a certification of the decree that grants it, accompanied by a duplicate of the description and of the designs; it shall be drawn up in the name of the Nation, there being invoked therein the authorization of the Government, and it shall be signed by the President of the Board of Public Credit and the Secretary of the same, and shall bear the seal of that bureau.

ART. 17. Any resolution of the Board of Public Credit denying the ownership of a mark may be appealed within the ten following days to the Ministry of Finance, which, after hearing the Attorney General of the State, shall confirm or reverse the denial.

ART. 18. The Board of Public Credit shall open a book in which shall be entered in serial order the grants of marks, the President having to give every three months to the Minister of Finance a statement as regards certificates granted and of those that shall have been denied, there being stated their respective dates.

This statement shall be published in the press.

ART. 19. For the registration of each mark of manufacture and of commerce of foreign origin there shall be paid twenty pesos gold, and of domestic origin, fifty pesos currency.

For every certified copy that shall be solicited there shall be paid twenty pesos currency, and the fee for stamps is raised to two pesos per sheet.

ART. 20. Marks for which certificates are issued shall remain archived with the Board of Public Credit.

In case of litigation there shall be exhibited before the competent judge the design of the mark, as well as attestation of the description thereof or of any other exhibit concerning the question.

ART. 21. Marks, as well as their descriptions, shall be held in the Office at the disposition of whoever shall desire to consult them.

TITLE III

Names of Manufacture and of Commerce

Art. 22. The name of a merchant, and of a firm, that of a sign or designation of a house that deals in determined articles, shall constitute an industrial property for the effects of this law.

Art. 23. If a merchant shall desire to carry on an industry already under exploitation by another person, with the same name, or with the same conventional designation, he shall adopt a modification that will make that name or that designation visibly different from the one that the pre-existing house uses.

Art. 24. If the one injured by the use of a name of manufacture or of commerce does not make claim within the term of one year from the day it began to be used by the other person, his action shall be barred by limitation.

Art. 25. Joint stock corporations shall have the right to the name that they use, the same as any private individual, and shall be subject to the same limitations.

Art. 26. The right to the exclusive use of a name as industrial property shall expire along with the commercial house that bears it, or along with the exploitation of the branch of industry.

Art. 27. There shall not be necessary the registration of a name in order to exercise the rights accorded by this law, save the case in which it shall form part of a mark.

TITLE IV

Penal Provisions

Art. 28. They shall be punished by a fine of from 20 to 500 pesos, or imprisonment of from fifteen days to one year:

1) That falsify or change in any way a mark of manufacture or of commerce;

2) That affix to their products or the articles of their commerce a mark belonging to another;

3) That knowingly sell, place on sale, or are prepared to sell or to circulate, articles with a counterfeit or fraudulently affixed mark;

4) That knowingly sell, offer for sale, or are ready to sell, counterfeit marks, and those that sell authentic marks without the knowledge of their owner;

5) All those that with fraudulent intention shall be of the intention to affix, or shall cause to be placed, upon merchandise an announcement or any other designation false with relation to the nature, quality, quantity, number, weight or measure, or the place or country in which it has been manufactured or marketed;

6) Those that knowingly sell, offer for sale, or are ready to sell, any goods of those declared false mentioned in the preceding paragraph.

In case of repetition these penalties shall be doubled.

ART. 29. In order that it be considered a crime, it is not necessary that the falsification shall embrace all the objects that were to be marked, there sufficing the affixing to a single article.

ART. 30. Simple attempt shall not incur penalty nor cause civil responsibility, but shall occasion the destruction of the instruments that were intended to serve exclusively for the falsification.

ART. 31. Those that sell or place on sale goods with a usurped or falsified mark shall be obliged to give to the merchant or manufacturer, owner thereof, complete information in writing regarding the name and the address of him who shall have sold or obtained the merchandise, as well as regards the time at which the sale has commenced, and, in case of refusal, they may be legally compelled, under pain of being considered as accomplices of the guilty parties.

ART. 32. Goods with a falsified mark that are found in the possession of the counterfeiter or of his agents shall be confiscated, and their proceeds, after payment of the costs and the indemnifications established by this law, shall be adjudicated to the benefit of the National schools.

ART. 33. Falsified marks that are found in the possession of the counterfeiter or of his agents shall be destroyed, as well as the instruments that have served specially for their falsification.

ART. 34. Criminal action may not be lodged officially and shall correspond solely to the individuals interested, but, once begun, it may be continued by the Government Attorney.

The plaintiff may withdraw from his action at any time prior to the rendering of sentence.

ART. 35. Those damaged through contravention of the precepts of this law may bring action for damages and injuries against the authors of and accomplices in the fraud.

Sentences of condemnation shall be published at the cost of the offender.

ART. 36. Civil or criminal action may not be brought after the expiration of three years from the commission or repetition of the crime, or after one year counted from the day on which the owner of the mark first had knowledge of the fact.

Acts that interrupt the statute of limitations are those that are specified by Common Law.

ART. 37. The dispositions contained in the articles of the

present Title shall be applicable as respects those that illegally make use of the name of a merchant or the designation of a house of commerce or of manufacture, in accordance with what is established in Title II of the present law.

TITLE V

Transitory Provisions

Art. 38. Industrials that, on the promulgation of this law, shall be in possession of a mark within the territory of the Republic, shall not be able to obtain the exclusive right to the exclusive use thereof unless they fulfill the conditions required by the present law. To this end there is accorded to them a term of one year, counting from the day of its promulgation.

Art. 39. If, prior to the promulgation of this law, various industrials shall have made use of the same mark, the right to the exclusive use thereof shall belong to him that shall have made use of such mark before the others.

Art. 40. If none of those interested shall be able to show the priority of time indicated in Art. 38, no one shall be able to prevail as regards the use made thereof prior to the sanction of the present law for claiming the right of priority.

Art. 41. Prior to the issuance of a certificate of a mark within the first year of effectiveness of this law, the petition of the applicant or applicants shall be published for a term of thirty days and at his or their expense in a daily paper of the Capital of the Republic, or in one of the place of his or their residence, the case occurring.

Art. 42. In order that foreign marks shall enjoy the guarantees that this law accords, they shall be registered in accordance with its prescriptions.

The proprietors thereof or their duly authorized agents shall be the only persons that may solicit registration.

Art. 43. The Executive Power shall make regulations for the present law.

Art. 44. Be it communicated to the Executive Power.

DECREE NO. 9769 OF APRIL 22, 1919

It being necessary to establish efficacious protection in favor of the owners of foreign marks of manufacture and of commerce, and, in accordance with Art. 43 of the Law of July 6, 1889,

The President of the Republic

Decrees:

Article 1. For the registration of a mark of manufacture

or of commerce for foreign products the Direction of Internal Revenue shall require proof of the right of ownership from the applicant for said mark.

ART. 2. Ownership of the mark shall be justified through one of the following means:

1) Presentation of the certificate of registration issued by the corresponding authority, or a legalized copy;

2) Presentation of the certificate of registration issued by the Consulate of the nationality of the applicant to the effect that the latter is the owner of the mark;

3) Any other means to the satisfaction of the Direction of Internal Revenue.

ART. 3. In order to register new marks intended to distinguish foreign products for exclusive sale within the country, the applicant shall give evidence of this circumstance on making application for registration. In case of false declaration, the Direction of Internal Revenue may on its own initiative annul the registration.

ART. 4. Be it communicated, published, and delivered to the Official Registrar.

PERU

LAW OF DECEMBER 19, 1892

ARTICLE 1. Any person or industrial society may solicit and obtain the official registration of the denominations of objects, or the name of persons, that are written in a special form, as likewise, emblems, monograms, engravings or designs, seals, vignettes and reliefs, letters and ciphers of a determined form, the containers, coverings, or wrappings of articles, and, in general, any sign or distinctive employed so that the products of a factory or articles of commerce of one class may be differentiated from others.

ART. 2. The use of a mark is optional; however, it shall be obligatory when public expedience so requires.

ART. 3. There shall not be susceptible of registration as a mark of manufacture:

1) Letters, words, names or distinctives that the State uses or may use;

2) The form that the manufacturer has given to the article;

3) The color of the product;

4) Terms or locutions that are in general use;

5) Designations that are usually employed for indicating the nature of the products or the class to which they pertain;

6) Immoral designs or expressions.

ART. 4. The right of ownership that is recognized for a registered mark of manufacture shall endure for ten years; the registration being possible of being renewed for an equal period within the last six months of the term, by there being observed the same formalities, and on payment of the same fees, as for the first registration.

ART. 5. The registration of a mark of manufacture implies the acknowledgment of absolute dominion thereover on the part of him that has obtained it, and the right that he may exercise in legally opposing and prosecuting the use of any other mark that, directly or indirectly, shall cause confusion as to similar articles of different origin; this right of ownership shall only extend to industries of the same class.

ART. 6. The right of ownership of marks of manufacture shall pass to the heirs, and is transmissible by contract and through disposition of last will.

ART. 7. It is understood that the right of ownership of a mark shall be transferred along with the factory or establish-

ment that uses it, when it is sold or transferred, and provided that nothing to the contrary is stipulated or expressed.

The transfer shall be recorded in the Office in which the mark was registered.

ART. 8. For legal effects there shall be considered valid and effective only those marks of manufacture for which a certificate of registration has been issued by the respective Office.

ART. 9. Priority or preference as to the ownership of a mark of manufacture shall be determined by the date on which was presented the application for registering it.

ART. 10. To obtain the ownership of a mark of manufacture it is necessary:

1) To present an application at the Ministry of Finance and Commerce, there being included two facsimiles of the mark that is to be registered;

2) To present, likewise in duplicate, a description of the mark or sign, when it consists of a figure or emblem;

3) To designate the class of objects to which the mark or sign is affixed, or is intended to be affixed, and explain whether it is to differentiate the products of some factory or to distinguish a determined group of articles of commerce;

4) To evidence with the receipt of the General Treasury that the registration fees have been paid;

5) To present the power of attorney granted by the manufacturer or merchant—owner of the mark—in whose name the registration is solicited, when the applicant does not appear in person.

ART. 11. In the Directorate of Industry of the Ministry of Finance and Commerce there shall be opened a Register for foreign marks, and another for national factories or establishments, in which succinct note shall be taken of applications filed, there being stated the day and hour of presentation. Each one of the entries shall be signed by the Chief of the Office, the Secretary or clerk of the same, and the applicant; to this last named there shall be given—without cost other than that of the administrative stamped paper—a copy of the entry cited. These Registers shall be foliated and their sheets rubricated by the Minister of Finance.

ART. 12. The same Office shall also open a Book in which shall be noted in order of date the concessions that are granted for the ownership of marks of manufacture; the Chief presenting semi-annually to the Government the list of those allowed or rejected during that period, with indication of the dates, which same must be published.

ART. 13. The marks of manufacture, classified, shall be

preserved in the archives of the Office, the originals having to be presented in case of litigation. They may also be consulted in the Office by the public.

ART. 14. The certificate of ownership of a mark that the Office issues shall bear annexed the duplicate of the description and of the design that were presented along with the application, and it shall be sealed and signed by the Chief thereof, in the name of the Nation and under the authority of the Government.

ART. 15. Reconsideration of any decision that shall have been given rejecting the registration of a mark may, within a term of thirty days, be petitioned of the Government, which shall decide same after previously hearing the Attorney of the Most Excellent Supreme Court.

ART. 16. Applicants or their representatives shall pay the following fees:

For the registration of a foreign mark or name, one hundred soles, silver;

For registration of an assignment and for issuing the certificate that accredits same, fifty soles;

For certificate of first registration, forty soles; and

For each duplicate certified copy, twenty soles, there being paid in addition the amount of the administrative stamped paper on which these documents are drawn up.

This tariff shall be one quarter as much if the factory or establishment is national.

ART. 17. For the effects of this law there shall constitute industrial property: the name of a merchant or that of a mercantile or industrial society, or the title or designation of a house that traffics or deals in any article.

ART. 18. The manufacturer or merchant that engages in an industry in which another person has been engaged under the same name, shall have to modify this, so that the denomination will be different.

ART. 19. Any protest by an interested party for injuries that he shall suffer must be made within the term of one year.

ART. 20. Legal persons or corporations shall have the same rights as individuals with respect to the ownership of their names, and they shall be subject to the same conditions as the latter.

ART. 21. The exclusive right to the use of a name—considered as industrial property—shall terminate with the closing of the house or factory, or with the cessation of the industry, to which the right refers.

ART. 22. To enjoy the benefits of the law as regards the ownership of a name, it is not necessary that this be registered;

however, registration is indispensable when it forms part of a mark of manufacture.

ART. 23. Usurpation of the right of ownership of a mark of manufacture shall be punished by fines of from twenty-five to five hundred soles, or with imprisonment of from forty days to six months. There shall be liable to this penalty:

1) Those that falsify or change in any way a mark of commerce or of manufacture;

2) Those that place upon their own products or articles of commerce a mark that belongs to another person;

3) Those that knowingly sell, offer for sale, or agree that there be sold to them, or consent to sell or circulate, articles that bear counterfeit or fraudulently affixed marks;

4) Those that knowingly sell, offer for sale, or agree that there be sold to them, counterfeit marks, or even authentic marks, without the consent of their legitimate owners;

5) Those that, with intention to defraud, mark or have marked, articles with false labels or designations, whether with respect to the nature, quality, quantity, number, weight, or measure, or of the country of origin or manufacture;

6) Those that knowingly sell, offer for sale, or agree that there be sold to them, articles with the false indications to which the preceding paragraph refers.

ART. 24. In cases of repetition the penalty shall be doubled.

ART. 25. In order that there be infraction or usurpation of the right, it shall suffice that the counterfeit mark shall have been affixed to a single article.

ART. 26. Those that have sold or shall have for sale any article with a counterfeit mark, infringing or usurping legitimate rights, shall be obliged to inform in writing the proprietor of the mark with reference to the name and address of the persons from whom they have made the purchase, or from whom they have received the offer, and the dates on which negotiations commenced. Whoever shall refuse to supply this information may be compelled judicially, under pain of being held as an accomplice in or concealer of the fraud.

ART. 27. Articles with a counterfeit mark that are found in the possession of the counterfeiter or his agents shall be confiscated and sold, the proceeds of the sale being applied to the payment of the costs and indemnification established by law; and the excess, to the schools of the Provinces in which the sequestration was made.

ART. 28. False marks that are found in the possession of the transgressor, and the instruments and tools employed in the falsification, shall be destroyed.

ART. 29. The right of making criminal accusation against transgressors shall pertain exclusively to the one injured; however, the proceedings once begun, the State's Attorney shall take part. The plaintiff may, nevertheless, at any time, before the delivery of judgment, withdraw from the accusation and terminate the case.

ART. 30. Persons injured may institute civil action for damages and injuries against the authors of the fraud and their accomplices. The sentence shall be published at the cost of the guilty party. The action shall become outlawed in three years from the commission of the infraction, and one year after the owner shall have had knowledge thereof.

ART. 31. In cases of usurpation of a name there shall prevail the same dispositions as prescribed for marks of manufacture.

ART. 32. Registrations of marks that the Municipal Councils have effected shall be revalidated on petition of those interested, making them extensive to all the territory of the Republic, and there shall be paid, in this case, one-half of the respective fee.

ART. 33. The Provincial Councils being prohibited from making provisions in this matter shall deliver to the Ministry of Finance the Books for the Registration of Marks that are in their possession.

TRANSITORY PROVISIONS

ART. 34. Industrials that, on the promulgation of this law, shall be in possession of a mark within the territory of the Republic, shall not be able to obtain the right of exclusive use thereof save by complying with the conditions required by the present law.

To this end there is accorded them the term of one year, counting from the day of its promulgation.

ART. 35. If, prior to the promulgation of this law, various industrials shall have made use of the same mark, the right of exclusive use thereof shall pertain to him that shall show that he has used such mark before the others.

If none of those interested shall be able to justify priority in the use of the mark, the ownership thereof shall be granted to him that pays the greatest commercial matriculation fee.

If the matriculation fees are equal, he shall be preferred that has employees in the factory of the greatest number of national operatives.

ART. 36. A mark not having been registered within the term fixed by Art. 34, no one may, for claiming the right of pri-

ority, avail himself of the use thereof prior to the sanction of the present law.

ART. 37. Before the issue of a certificate of a mark during the first year of the effectiveness of this law, the petition of the applicant or applicants must be published, at his or their cost, for the term of thirty days in a periodical of the Capital of the Republic, and in one of the place of his or their residence.

PHILIPPINE ISLANDS

LAW NO. 666 OF MARCH 6, 1903

SECTION 1. A trade mark is a name, emblem, sign, or device, employed by any person, firm or corporation, to designate the goods dealt in or manufactured by such person, firm or corporation, for the purpose of enabling the public to recognize such goods and manufacture, and to distinguish them from the goods and manufactures of others.

SEC. 2. Anyone who produces, or deals in, merchandise of any kind by actual use thereof, in trade may appropriate to his exclusive use a trade mark, not so appropriated by another, to designate the origin or ownership thereof: *Provided*, That a designation or part of a designation which relates only to the name, quality, or description of the merchandise or geographical place of its production or origin, can not be the subject of a trade mark.

SEC. 3. The ownership or possession of a trade mark, heretofore or hereafter appropriated, as in the foregoing section provided, shall be recognized and protected in the same manner, and to the same extent, as are other property rights known to the law. To this end any person entitled to the exclusive use of a trade mark to designate the origin or ownership of goods he has made or deals in, may recover damages in a civil action from any person who has sold goods of a similar kind, bearing such trade mark, and the measure of the damages suffered, at the option of the complaining party, shall be either the reasonable profit which the complaining party would have made had the defendant not sold the goods with the trade mark aforesaid, or the profit which the defendant actually made out of the sale of the goods with the trade mark, and in cases where actual intent to mislead the public or to defraud the owner of the trade mark shall be shown, in the discretion of the court, the damages may be doubled. The complaining party, upon proper showing, may have a preliminary injunction restraining the defendant temporarily from use of the trade mark pending the hearing, to be granted or dissolved in the manner provided in the code of civil procedure, and such injunction upon final hearing, if the complainant's property in the trade mark and the defendant's violation thereof shall be fully established, shall be made perpetual, and this injunction shall be part of the judgment for damages to be rendered in the same cause as above provided.

SEC. 4. In order to justify recovery for violation of trade mark rights in the preceding section defined, it shall not be necessary to show that the trade marks have been registered under the royal decree of eighteen hundred and eighty-eight, providing for registration of trade marks in the Philippine Islands, in force during the Spanish sovereignty in these Islands, nor shall it be necessary to show that the trade mark, has been registered under this Act. It shall be sufficient to invoke protection of his property in a trade mark if the party complaining shall prove that he has used the trade mark claimed by him upon his goods a sufficient length of time so that the use of the trade mark by another would be an injury to him and calculated to deceive the public into the belief that the goods of that other were the goods manufactured or dealt in by the complaining party.

SEC. 5. A trade name is the name, device, or mark by which is intended to be distinguished from that of others, the business, profession, trade or occupation in which one may be engaged and in which goods are manufactured or sold to the public, work is done for the public, or professional services are rendered to the public. It is not essential that the trade name should appear on the goods manufactured or dealt in by the person owning or using the same. It is sufficient if the trade name is used by way of advertisements, signs over the place of business, upon letter heads, and in other ways to furnish to the public a method of distinguishing the business, trade, or occupation of the person owning and using such name. Property in trade names shall be as fully protected as property in a trade mark by the civil remedies provided in section three of this Act for the protection of property in trade marks.

SEC. 6. Any person who, with intent to defraud the public or the owner of a trade mark or trade name, shall use the trade mark of another on his goods offered for sale, or the trade name of another in his business, occupation or profession, and any person who, knowing that a trade mark has been fraudulently used on goods with the intent aforesaid, shall sell such goods or offer the same for sale and any person who shall knowingly aid or abet another in such fraudulent use of a trade mark or trade name, shall be punished by a fine of not exceeding two thousand five hundred dollars, or by imprisonment not exceeding three years, or both, in the discretion of the court. Any person knowing the purposes for which such trade mark or trade name is to be used, and that it is the property of one person, prints, lithographs, or in any way reproduces such trade mark or trade name, or a colorable imitation thereof, for another person, to

enable that other person fraudulently to use such trade mark or trade name in the deception of the public and the defrauding of the real owner of the trade mark or trade name, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding eighteen months, or both, in the discretion of the court.

SEC. 7. Any person who in selling his goods shall give them the general appearance of goods of another manufacturer or dealer, either in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, and who clothes the goods with such appearance for the purpose of deceiving the public and defrauding another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose, shall be guilty of unfair competition, and shall be liable to an action for damages, in which the measure shall be the same as that provided for a violation of trade mark rights, together with discretionary power in the court to impose double damages, if the circumstances call for the same. The injured party may also have a remedy by injunction similar to that provided for in cases of violation of trade marks. This section applies in cases where the deceitful appearance of the goods, misleading as to origin or ownership, is effected not by means of technical trade marks, emblems, signs, or devices, but by the general appearance of the package containing the goods, or by the devices or words thereon, even though such packages, devices, or words are not by law capable of appropriation as trade marks; and in order that the action shall lie under this section, actual intent to deceive the public and defraud a competitor shall affirmatively appear on the part of the person sought to be made liable, but such intent may be inferred from similarity in the appearance of the goods as packed or offered for sale to those of the complaining party.

SEC. 8. Any person guilty of unfair competition, as defined in the preceding section, in addition to the civil remedies to which he may be subject, shall also be liable criminally, in case of conviction for the same, to a fine of not exceeding two thousand dollars or imprisonment not exceeding two years, or both, in the discretion of the court.

SEC. 9. No action, or suit, or criminal prosecution shall be maintained under the provisions of this Act in any case where the violation of the trade mark or trade name or the unfair

competition complained of has been in any unlawful business, or with respect to any article trade in which is unlawful, or is against public policy, or in any case where the trade mark, trade name, or the indicia of origin, ownership, or manufacture have been used by the complaining and injured party for the purpose of himself deceiving the public with respect to the character of the merchandise sold by him or of the business or profession or occupation carried on by him.

SEC. 10. The use of a trade mark or trade name by the assignee of the original manufacturer or dealer who first used and established the exclusive right to use such trade mark or trade name in his business, shall be lawful and shall be protected under this Act if the fact of the assignment from the original owner is shown in association with the trade mark or trade name wherever used by the assignee.

SEC. 11. The owners of trade marks or trade names domiciled in the Philippine Islands, or the United States, or in any foreign country which by treaty, convention, or law affords similar privileges to the citizens of the United States and of the Philippine Islands, may obtain registration of such trade marks or trade names by complying with the following requirements:

First. By causing to be recorded in the Division of Archives, Patents, Copyrights, and Trade Marks a statement specifying the name, domicile, location, and citizenship of the applicant; the general class or classes of merchandise to which the trade mark claimed has been appropriated; or in case of a trade name the description of the business, profession, or occupation it is to distinguish; a description of the trade mark or trade name itself, with facsimiles thereof, and a statement of the mode in which the same is applied and affixed to goods, or is to be used in the business, profession or occupation, and the length of time during which the trade mark or trade name has been used.

Second. By paying into the Division of Archives, Patents, Copyrights, and Trade Marks the sum of twenty-five dollars in money of the United States and complying with such regulations as may be prescribed by the chief of said Division.

SEC. 12. The application prescribed in the foregoing section must be accompanied by a written declaration verified by the person, or by a member of the firm, or by an officer of the corporation applying, to the effect that such party has at the time a right to the use of the trade mark or trade name sought to be registered, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to de-

ceive; and that the description and facsimiles presented for registry truly represent the trade mark sought to be registered.

SEC. 13. The time of the receipt of any such application shall be noted and recorded. But no alleged trade mark or trade name shall be registered which is merely the name, quality, or description of the merchandise upon which it is to be used or the geographical place of its production or origin, or which is identical with a registered or known trade mark owned by another and appropriate to the same class of merchandise, or which so nearly resembles another person's lawful trade mark or trade name as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Chief of the Division of Archives, Patents, Copyrights, and Trade Marks shall decide the presumptive lawfulness of claim to the alleged trade mark.

SEC. 14. No article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or shall copy or simulate a trade mark or trade name registered in accordance with the provisions of this Act, or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the Philippine Islands, shall be admitted to entry at any customhouse of the Philippine Islands; and in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader may require his name and residence and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade mark or trade name issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the office of the Insular Collector of Customs, under such regulations as the Insular Collector of Customs, with the approval of the Secretary of Finance and Justice, shall prescribe, and may furnish to the office of the Insular Collector of Customs a facsimile of his name, the name of the locality in which his goods are manufactured, and of his registered trade mark or trade name; and thereupon the Insular Collector of Customs shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs: *Provided, however,* That this section shall not be construed to affect rights that any person may have acquired by virtue of having registered a trade mark under the laws of the United States.

In matters arising under this section original jurisdiction is hereby conferred upon the Court of First Instance, and appellate jurisdiction upon the Supreme Court, identical with the jurisdiction conferred upon such courts by section twenty-six

of the Act of Congress approved August fifth, nineteen hundred and nine, entitled "An Act to raise revenue for the Philippine Islands, and for other purposes."

SEC. 15. Certificates of registration of trade marks and trade names under the Spanish sovereignty in these Islands unannulled, under the royal decree of eighteen hundred and eighty-eight, shall be conclusive evidence of the exclusive right of ownership of such trade marks or trade names in respect to the goods and articles of merchandise or the business, profession, or occupation to which they by the terms of the registration apply.

SEC. 16. Certificates of registry of trade marks and trade names shall be issued in the name of the Insular Government of the Philippine Archipelago, under the seal of the Division of Patents, Copyrights, and Trade Marks, Executive Bureau, and shall be signed by the chief of the Division of Archives, Patents, Copyrights and Trade Marks and a record thereof, together with printed copies of the specific trade marks and trade names, shall be kept by him in books for that purpose. Certified copies of trade marks or trade names and of statements and declaration filed therewith, and original certificates of registry, shall be evidence in any suit in which such trade marks or trade names shall be brought into controversy. But registration of trade marks and trade names under this Act shall only be prima facie evidence of the exclusive right by the person securing the registration to use the same.

SEC. 17. A certificate of registry shall remain in force for thirty years from its date, except in cases where the trade mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed on the same terms and for a like period.

SEC. 18. Applicants for registration under this Act shall be credited for any fee or part of a fee heretofore paid into the Division of Archives, Patents, Copyrights, and Trade Marks with intent to procure protection for the same trade mark or trade name.

SEC. 19. Any person who shall procure the registry of a trade mark, or of himself as the owner of a trade mark or trade name, or an entry respecting a trade mark or trade name, in the Division of Archives, Patents, Copyrights, and Trade

Marks, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, or any person who shall aid or abet such fraudulent procuring of registry, shall be liable to pay any damages sustained in consequence thereof to the injured party; and shall further be liable to criminal prosecution, and upon conviction shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year and one day, or both, in the discretion of the court.

SEC. 20. The Chief of the Division of Archives, Patents, Copyrights, and Trade Marks is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade marks or trade names and for recording such transfers in his office.

SEC. 21. The citizens and residents of this country wishing the protection of trade marks in any foreign country, the laws of which require registration here as a condition precedent to getting such protection there, may register their trade marks for that purpose, as is above allowed to foreigners, and have certificate thereof from the Division of Archives, Patents, Copyrights and Trade Marks, upon payment of the same fee as that required by section eleven.

SEC. 22. All the duties appertaining to the Bureau of Patents, Copyrights, and Trade Marks are hereby devolved upon the Chief of the Division of Archives, Patents, Copyrights, and Trade Marks.

SEC. 23. The royal decree of eighteen hundred and eighty-eight as to the registration of trade marks, as continued in force by military order, is hereby repealed.

SEC. 24. This Act shall take effect on its passage.

POLAND

LAW OF FEBRUARY 4, 1919

ARTICLE 1. All marks or designations of every kind that serve for manufacturers or merchants to distinguish their products from those of other manufacturers or merchants shall be considered as marks of manufacture or of commerce.

ART. 2. The use of marks of manufacture or of commerce depends upon the will of manufacturers and merchants; however, this disposition is not applicable to whatever concerns marks whereof the use upon certain goods is rendered obligatory by special laws.

ART. 3. There may not be used:

1. Marks that contain inscriptions or designs contrary to law, morality, or public security;

2. Marks that contain inscriptions or designs susceptible of inducing buyers to error.

Marks containing the reproduction of distinctions of honor that a manufacturer or merchant has obtained for certain determined goods may be employed only upon merchandise of the same class.

ART. 4. Every manufacturer or merchant that wishes to acquire the exclusive right to make use of a mark (Arts. 1 and 2) must deposit in the Patent Office:

1. An application in Polish with indication:

a. Of the name, surname, and domicile of the depositor and of his attorney, should there be such;

b. Of the corporate name and of the kind of enterprise;

c. Of the location of the corporation;

d. Of the products (Art. 8) for which the mark is intended;

2. an exact design of the mark when it does not consist in a simple denomination, and, in case of need, a description;

3. The State Treasury receipt attesting that the fee has been paid (Art. 14).

With the application in Polish may be joined a list of the goods and a description in a foreign language; but it is the Polish language that shall be decisive.

ART. 5. Every depositor domiciled abroad must act with the Patent Office through the intermediary of an attorney, and furnish proof that, in the country in which is located the main office of his house, the mark is protected.

This certificate of protection shall be delivered—unless in-

ternational conventions prescribe the contrary—only when the mark answers to the requirements of the present law.

ART. 6. The delivery of the certificate of protection for a mark shall prevent no one from affixing upon his goods or their wrappers his name and surname, in full or abbreviated, his escutcheon, his signature or his address, or indications concerning the kind, the time, and the place of the production and of the sale of the goods, as well as the purpose, the price, the quantity, the measure, the weight, and the method of use of the products in commerce, when these indications are not of a nature to cause error regarding the origin of the merchandise.

ART. 7. The inscriptions in marks must be executed in Latin characters; however, foreign marks (Art. 5) may be protected in Poland under the form in which they are protected abroad.

ART. 8. The Minister of Commerce and of Industry shall establish a classification for products.

Each manufacturer or merchant may deposit a mark only for the products that are included within the scope of his enterprise; however, these products may be included in one or many classes.

ART. 9. There shall not be susceptible of protection, marks:

1. That do not satisfy the requirements of Arts 3, 5, 7 and 8;

2. That are not sufficiently distinguished from marks for which the Patent Office has granted certificates of protection to other manufacturers or merchants for the same class of products, unless the depositor furnish proof that the original proprietor of the mark is consenting;

3. That are generally employed to designate the products of a determined kind;

4. That consist solely of separate ciphers, or of letters or of words designating the kind, the time, the place of manufacture or of sale, the quality, the use, the price, the measure or the weight of the goods;

5. That contain the arms or other insignia of the sovereignty of the State or the arms of a locality of the country, of a communal association, or of a commune.

In addition, applications that do not answer to the requirements of Art. 4 shall not be taken into consideration.

No. 5, above, is not applicable when the depositor has the right of using the arms or the insignia of sovereignty of the State and desires to make thereof a constituitive part of his mark.

ART. 10. After examination and assurance that the application is not contrary to the dispositions of Art. 9, the Patent Office shall invite the depositor to furnish a *cliché* [electrotype] and three impressions of the mark. The application shall then be published with the essential details in the *Official Journal.* During the two months that shall follow the publication and under the conditions prescribed by Art. 9, opposition may be made in writing to the delivery of the certificate of protection. The exhibits in support of the opposition must be filed.

At the same time as the opposition, there must be presented at the Patent Office a receipt from the State Treasury attesting the payment of 20 Polish marks for the expenses of opposition. If opposition has not been lodged within two months or if the opposition is rejected, there shall be delivered to the depositor a certificate of protection for the mark (Art. 12). The certificate of protection shall be signed by the President of the Patent Office, after having been provided with the necessary stamp. If the mark does not answer to the prescriptions of Art. 9 the Patent Office shall refuse to deliver the certificate of protection and, at the same time, shall advise the applicant regarding the reasons for the refusal.

ART. 11. The depositor that is not satisfied with the decision rejecting his application, according to Art. 10, and the opposer that is not satisfied with the decision granting the certificate of protection, may have recourse to an appeal, within the two months that follow the notification of the decision, to the Appellate Section of the Patent Office, on producing a receipt from the State Treasury that attests the payment of the appeal fee of 30 Polish marks.

ART. 12. The delivery of the certificate of protection shall confer upon the manufacturer or the merchant the exclusive right to make use of the mark, to affix it upon the goods designated in the certificate of protection, upon goods of the same kind, or upon the wrappers or receptacles in which the goods are contained, the same as the right to make use of the mark for commercial announcements, prices-current, and printed matter.

ART. 13. The certificate delivered for a mark that has been deposited in one color and in one dimension shall confer the exclusive right to make use of this mark in all colors and dimensions.

ART. 14. The certificate of protection for a mark is delivered for a duration of ten years counting from the signature (Art. 10). The fee for the deposit of the mark and for the first period of ten years is 50 Polish marks; in addition, the depositor must pay 30 Polish marks for each of the classes of mer-

chandise designated in the application. Prior to the expiration of the term of protection of ten years, the certificates may be prolonged for new periods of ten years, on payment of a fee of 50 Polish marks for each period. Payments must be made at the State Treasury, and the receipts shall be presented at the Patent Office.

ART. 15. The certificate shall be delivered to the person that has presented his application first, even when, during the course of procedure, a demand shall be presented by other persons for the same mark.

Between two applications presented the same day, the first shall be that which bears the lowest number in the Register of Applications of the Patent Office.

ART. 16. There shall be published in the *Official Journal* the deposit of a mark with the essential details of the application (Art. 4, Nos 1 and 2), the delivery of the certificate of protection for the mark, with the same details (Art. 4, Nos. 1 and 2), the prolongation (Art. 14), and the expiration of its validity (Art. 190).

ART. 17. The delivery of a certificate of protection shall prevent no one from bringing before the tribunal the question of knowing whether the possessor of the certificate has the exclusive right to employ the mark.

Action may likewise be based upon any of the reasons that, on examination of the application, might justify the refusal of the certificate of protection.

ART. 18. The right to a mark may be transferred in whole or in part to a purchaser or lessor of the industrial or commercial establishment, on condition that, within six months (counting from the day of the sale or of the leasing contract), proof be deposited in the Patent Office to the effect that the former proprietor agrees.

For every inscription of the certificate of protection in the name of a new proprietor, there shall be collected a fee of 20 Polish marks. The fee is payable at the State Treasury and the receipt shall be joined to the petition sent to the Patent Office.

ART. 19. The protection of a mark shall expire:

1. Through written renunciation of the proprietor or by dissolution of the enterprise;

2. Through default of renewal of the certificate of protection within the term prescribed (Art. 14);

3. When the Patent Office is not notified within six months that the mark has been transferred to another proprietor (Art. 18);

4. When the tribunal pronounces loss of the right to use the mark (Art. 17).

ART. 20. In the cases provided for in Nos. 1, 2 and 3 of Art. 19, the exclusive right of making use of the mark may be again recognized only after the expiration of a term of two years, counting from the day on which the extinction of the protection has been published (Art. 16).

ART. 21. Every violation of the right to the exclusive use of a mark shall entail the responsibility provided for by the dispositions of the Penal Code, without prejudice to the obligation to make reimbursement for damages and losses caused.

ART. 22. The Patent Office shall keep a special Register and shall preserve a collection of marks.

This collection may be shown to any person that makes application therefor. The Register, which all persons interested may consult, must contain the number and the essential details of the certificate of protection.

ART. 23. Certificates of protection for marks that have been deposited by virtue of laws in force up to the present in Poland or in certain parts of Poland, shall remain valid, under reservation of the rights of third parties, on condition that the proprietors deposit them at the Patent Office within the six months that follow the entry into force of the present law, by joining thereto a petition (Art. 4, No. 1), a *cliché* with three impressions of the mark (Art. 10) and the receipt of the State Treasury attesting the payment of the fee (Art. 14).

The Ministry of Industry and of Commerce shall have the authority to extend the above delay.

Counting from the delivery of the certificate of protection in Poland, the marks in question shall be subject to the dispositions of the present law. In accordance with Art. 14, they shall be protected for ten years, counting from the day on which the certificate of protection in Poland has been signed.

ART. 24. The present law shall become of effect the day on which it shall be published in the *Bulletin of the Laws of Poland*.*

* Published in the *Bulletin of the Laws of Poland* (*Dziennik Prdw Panseva Polskieg*), No. 13 of February 7, 1919.

PORTO RICO

POLITICAL CODE APPROVED MARCH 1, 1902

SECTION 1. This Act shall be known as the Political Code of Porto Rico.

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CHAPTER V

TRADE MARKS

SECTION 213. That the owners of trade marks or commercial designs used in commerce in Porto Rico, provided such owners shall be domiciled in Porto Rico or the United States or located in any foreign country which affords similar privileges to citizens of the United States or Porto Rico, may obtain registration of such trade marks or commercial designs by causing to be filed in the office of the Secretary of Porto Rico a statement specifying name, principal place of business and citizenship of the party applying; the class of merchandise, and the particular description of goods comprised in such class to which the particular trade mark or design has been appropriated; a description of the trade mark or design itself, with fac-similes thereof, and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade mark or design has been used; by paying the required registration fee and complying with such regulations as may be prescribed by the Secretary of Porto Rico.

SECTION 214. That the application prescribed in foregoing Section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by a member of a firm or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade mark or design sought to be registered, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and fac-similes presented for registry truly represent the trade mark or design sought to be registered.

SECTION 215. That the time of receipt of any such application shall be noted and recorded. But no alleged trade mark or design shall be registered unless the same appear to be lawfully used as such by the applicant; nor which is merely the name of the applicant; nor which is identical with a registered or known

trade mark or design owned by another and appropriated to the same class of merchandise, or which so nearly resembles the lawful trade mark or design of another as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers. In an application for registration the Secretary of Porto Rico shall decide the presumptive lawfulness of claim to the alleged trade mark or design.

SECTION 216. That certificates of registry shall be issued in the name of the people of Porto Rico, and signed by the Secretary of Porto Rico, under seal, and a record thereof, together with copies of the specifications, shall be kept in books for that purpose. Copies of trade marks and designs and statements and declarations filed therewith, and certificates of registry so signed and sealed shall be evidence in any suit in which such trade marks or designs shall be brought into controversy.

SECTION 217. That a certificate of registry shall remain in force for twenty years from its date, except in cases where the trade mark or design is claimed for and applied to articles not manufactured in Porto Rico, and in which it receives protection under the laws where manufactured for a shorter period, in which case it shall cease to have any force in Porto Rico by virtue of this Act at the time that such trade mark or design ceases to be exclusive property elsewhere. At any time during six months prior to the expiration of the period of twenty years such registration may be renewed on the same terms and for a like period.

SECTION 218. That registration of a trade mark or design shall be *prima facie* evidence of ownership. Any person who shall reproduce, counterfeit, copy, or colorably imitate any trade mark or design registered under this Act and affix the same to merchandise of substantially the same descriptive properties as those described in the registration, shall be liable to an action for damages for the wrongful use of such trade mark or design at the suit of the owner thereof; and the party aggrieved shall also have his remedy in equity to enjoin the wrongful use of such trade mark or design.

SECTION 219. That no action or suit shall be maintained under the provisions of this Act in any case when the trade mark or design is used in an unlawful business, or has been used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

SECTION 220. That any person who shall procure the registry of a trade mark or design, or of himself as the owner of a trade mark or design, or any entry representing a trade mark or design, in the office of the Secretary of Porto Rico, by a false

or fraudulent representation or declaration, orally or in writing or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party.

SECTION 221. That the Secretary of Porto Rico is authorized to make rules and regulations governing registration under this Act, and for the transfer of the right to use trade marks and commercial designs, and shall collect the sum of ten dollars in addition to the fee for recording as provided by law for each trade mark or design.

SECTION 222. That all laws, decrees, or military orders, or parts thereof in conflict herewith, are hereby repealed.

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PENAL CODE APPROVED MARCH 1, 1902*

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CHAPTER XI

CRIMES AGAINST OTHER CLASSES OF PROPERTY

SECTION 311. Every person who wilfully reproduces, copies, imitates, forges, or counterfeits, or procures to be reproduced, copied, imitated, forged, or counterfeited, any trade mark usually affixed by any person to his goods, which has been duly recorded in the office of the Secreetary of Porto Rico, or with the Commissioner of Patents in the United States Patent Office, or any label or brand, composed in whole or in part of a reproduction of such trade mark, who affixes the same to goods of essentially the same descriptive properties and qualities as those referred to in the registration of such trade mark, with intent to pass off, or to assist other persons to pass off, any goods to which such reproduced, copied, imitated, forged, or counterfeited trade mark, or label, or brand is affixed, or intended to be affixed, as the goods of the person, firm, company, or corporation owning the said trade mark, is guilty of a misdemeanor.

SECTION 312. Every person who sells or keeps for sale, or manufactures or prepares, for the purpose of sale, any goods upon, or to which any reproduced, copied, imitated, forged, or counterfeited trade mark or label or brand composed in whole or in part of such reproduced, copied, imitated, forged, or counterfeited trade mark has been fixed, after such trade mark has been recorded in the office of the Secretary of Porto Rico, or with the Commissioner of Patents in the United States Patent Office, intending to represent such goods as the genuine goods of the

* Matter not relating to trade marks omitted.

person, firm, company, or corporation, owning the said trade mark, knowing the same to be reproduced, copied, imitated, forged or counterfeited, is guilty of a misdemeanor.

SECTION 313. The phrases "forged trade mark," and "counterfeited trade mark," or their equivalents, as used in this Chapter, include every alteration or imitation of any trade mark so resembling the original as to be likely to deceive.

SECTION 314. The phrase, "trade mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description.

SECTION 315. Every person who has in his possession, or who uses any cask, bottle, vessel, case, cover, label, brand, or other thing bearing, or having in any way connected with it the trade mark of another, which has been duly recorded in the Office of the Secretary of Porto Rico, or with the Commissioner of Patents in the United States Patent Office, or the trade name of another, for the purpose of disposing of any article other than that which such cask, bottle, vessel, case, cover, label, brand, or other thing originally contained, or is connected with by the owner of such trade mark or trade name, with intent to deceive or defraud, is guilty of a misdemeanor.

SECTION 316. Every person who wilfully sells or trafficks in any cask, keg, bottle, vessel, siphon, can, case or other package bearing the duly filed trade mark or name of another, printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon, or refills any such cask, keg, bottle, vessel, siphon, can, case, or other package with intent to defraud the owner thereof, without the consent of the owner thereof, or unless the same shall have been purchased from the owner thereof, is guilty of a misdemeanor.

SECTION 317. Every person who shall wilfully deface, erase, obliterate, cover up, or otherwise remove, destroy, or conceal the duly filed trade mark or name of another, printed, branded, stamped, engraved, etched, blown, impressed, or otherwise attached to, or produced upon any cask, keg, bottle, vessel, siphon, can, case, or other package, for the purpose of selling or trafficking in such cask, keg, bottle, vessel, siphon, can, case or other package, or refilling such cask, keg, bottle, vessel, siphon, can, case, or other package, with intent to defraud the owner thereof, without the consent of the owner, or unless the same

shall have been purchased from the owner is guilty of a misdemeanor.

SECTION 318. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearancee thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor.

SECTION 319. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

SECTION 320. Every person who marks or brands, alters or defaces, the mark or brand of any horse, mare, colt, jack, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat, or pig, belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

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PORTUGAL

LAW OF JUNE 4, 1883

CHAPTER I

General Provisions

Article 1. Any industrial or merchant shall have the right to distinguish the products of his industry or the objects of his commerce by using special and distinctive marks, and also that of having them stamped by the State.

Art. 2. In order that these rights be guaranteed to industrials and merchants, in accordance with the terms of the present law, it is, however, indispensable that they shall have subjected themselves to the fulfillment of the conditions and formalities that it prescribes.

Art. 3. The use of marks of manufacture and of commerce, and the application of the stampings of the State, shall only be obligatory in cases specially designated in the laws and regulations in force.

CHAPTER II

Marks of Manufacture and of Commerce

Art. 4. There shall be considered as marks of manufacture or of commerce, all signs that serve for distinguishing the products of an industry or the objects of commerce; and, as such, there may be adopted any special denominations or designations, stamps, emblems, seals, signs, borders, designs, reliefs, letters, devices, and, in their distinctive form, individual signatures or firms.

Sole Paragraph. There may not, however, be considered as marks of manufacture or of commerce, simple words, letters or ciphers written without distinctive form, and there shall not be accepted marks that contain words or designs offensive to morality and good conduct.

Art. 5. In the adoption of marks of manufacture or of commerce there shall be observed the following precepts:

1) No industrial or merchant may avail himself of a mark already used by another, or with which that of another may be confused;

2) No one shall be permitted to include in the mark of the products of his industry the indication of a country, of a region. or of a locality, in which they have not been produced, unless, through traditional usage, there is given to the products of a

Patent and Trade Mark Review

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IN TWO SECTIONS—SECTION 2

PORTUGAL

LAW OF MAY 21, 1896*

TITLE IV

Industrial and Trade Marks

CHAPTER I

Marks

Article 58. Any industrial, agrarian, or merchant that shall have satisfied the requirements of the present decree shall have the right of employing and having registered the industrial or commercial marks of his products, and may also have these marks stamped by the State.

Sole Paragraph. The use of industrial or commercial marks is optional, save for objects for which the mark shall have been declared obligatory by a law or a special regulation.

Art. 59. The use of industrial and commercial marks is authorized even when these marks shall not have been registered, when they do not injure the rights of those that have had legal registrations effected.

Art. 60. There shall be considered as an industrial or commercial mark any sign serving to distinguish the products of an industry or the objects of a line of business.

There may be adopted to this effect:

1) Industrial or commercial designations and firms;

2) The full or abbreviated names of industrials or merchants, and the facsimiles of their signatures;

3) Fancy or specific designations;

4) Emblems, seals, stamps, devices, stampings, imprints. vignettes, figures, designs, and reliefs;

5) Letters and ciphers combined in a distinctive manner;

6) The name of an agricultural or urban property belonging to the industrial or merchant.

*Matter not relating to trade marks is omitted.

SOLE PARAGRAPH. These signs may be typed, lithographed, imprinted, modeled, engraved, inlaid, woven, worked in the material, pyrographed, reproduced or imprinted in any manner whatsoever upon stoppers, labels, capsules and envelopes, upon the objects themselves, upon their partial or collective wrappings.

ART. 61. In order that a mark may be considered as an exclusive property it is essential that it shall have been registered.

ART. 62. The document through which the industrial or merchant establishes his right of ownership to the mark is the Certificate of Registration delivered by the Secretariat of State of Public Works, of Commerce, and of Industry.

SOLE PARAGRAPH. The right of ownership to a mark is limited to the class of objects for which it has been registered.

ART. 63. The registration of a mark does not imply the acknowledgment by the State of the fact that the mark is new or different from another previously registered mark.

ART. 64. The ownership of the mark registered is guaranteed for the terms hereafter stipulated.

ART. 65. The proprietor of the mark registered, and he alone, shall have the right of adding to his mark the mention: *Marca registrada* (Registered mark), or the initials *M. R.*

ART. 66. Marks may be registered in favor of a person, of a firm, of a joint-stock company, of a corporation, or of an association.

ART. 67. The duration of the exclusive privilege resulting from the fact of registration is ten years.

SOLE PARAGRAPH. This registration may be renewed indefinitely by periods of ten years on application for renewal made during the last year.

ART. 68. The marks of objects fabricated in the establishments of the State shall be considered in all respects as registered marks.

ART. 69. A registration may have reference to but a single mark.

PARAGRAPH 1. There shall not be considered as different those marks in which the colors alone differ.

PARAGRAPH 2. There shall be considered as different, marks of different form, even when they shall belong to the same proprietor and when they are affixed to products of the same nature.

PARAGRAPH 3. There shall be considered as different, marks of like form that are affixed to different products.

ART. 70. One example of each of the marks registered shall be placed at the disposition of the public in the Archives of Marks and Patents.

CHAPTER II

REGISTRATION

ART. 71. Applications intended for the registration of marks must be made by means of petitions drawn up in Portuguese and accompanied: by three examples of the mark; by a reduction or photographic copy of this latter; by a description in Portuguese of the same mark, with indication of the objects for which it is intended, as well as other documents that may be necessary.

PARAGRAPH 1. When it shall be a question of a pyrographed mark, the examples to be deposited shall be photographic copies.

PARAGRAPH 2. For woven marks, there shall be deposited pieces of the material under the same conditions that marks upon paper are deposited.

PARAGRAPH 3. For other marks, it is permissible to deposit a photographic copy or design of the mark.

PARAGRAPH 4. When the copy of the mark has not been executed in the natural size, this circumstance must be mentioned, or there must be indicated the true dimensions of the mark.

ART. 72. One of the examples of the mark deposited shall be preserved, duly classified, in the Division of Industry. The second example shall be preserved in the Archives of Marks and Patents. The third shall be pasted upon the certificate of registration delivered to the applicant.

ART. 73. The fees to be paid are the following: for the registration of the mark, 2,500 reis; for its renewal, 2,000 reis.

ART. 74. Applications for registration, as well as applications for renewal, may be made directly by those interested or their attorneys in the Division of Industry; or sent by registered letter, at the same time as a postal money order for the amount to be paid, in addition, 500 reis for the expenses of correspondence.

ART. 75. Applications for registration or for renewal, as well as the description of the mark and all other documents, may be drawn up in the French language, on condition that there be sent at the same time the additional sum of 500 reis per page for the expenses of translation.

ART. 76. Industrial or commercial marks of Portuguese residing abroad shall be registered under the same conditions as those of the marks of Portuguese or foreigners residing in Portugal, when they shall be deposited by those interested or their attorneys at the competent Division, or when they shall be addressed to this latter by registered letter.

SOLE PARAGRAPH. The marks of foreigners residing without Portugal shall be registered under the same conditions as those of Portuguese, if diplomatic conventions or the domestic legislation of the country to which they belong, or in which they possess industrial or commercial establishments, establish reciprocity in favor of Portuguese subjects.

ART. 77. The registration of international marks shall be effected in conformity with the dispositions of the Arrangement concluded at Madrid on April 14, 1891, and ratified on October 11, 1893.

ART. 78. Applications concerning the registration of marks shall be published in the *Diario do Governo* and in the *Boletim da Propriedade Industrial.*

SOLE PARAGRAPH. When the party interested shall furnish the typographic *cliché* of the mark, which shall be afterwards returned to him, the reproductcion of the mark shall appear in the *Boletim* together with the description of this latter.

ART. 79. The right of priority resulting from registration shall be computed by counting from the day and the hour at which the application reached the Division. For applications sent by post there shall be observed the order of preference hereafter indicated:

1) Applications of nationals and foreigners domiciled in Portugal, or Portuguese domiciled abroad, or foreigners belonging to the countries of the Union for the Protection of Industrial Property;

2) Foreigners of other countries.

PARAGRAPH 1. In each of these two groups when two or several analogous applications, sent by post, shall arrive at the same time, there shall be considered as the oldest that which shall have been sent from the locality from which postal correspondence with Lisbon requires the longest time.

PARAGRAPH 2. If the rule established in Paragraph 1 does not suffice for determining the preference, there shall be considered as the oldest the application that shall have been drawn up in Portuguese, while favoring, under like circumstances, that which has come the greatest distance.

Art. 80. Registrations shall be made by classes, in accordance with the nature of the products.

Sole Paragraph. Each registration shall bear two serial numbers: one for class, the other general.

CHAPTER III

Affixing of the Stamp of the State

Art. 81. The proprietor or the proprietors of a mark that shall desire to add to the mark the stamp of the State, whether imprinted, struck with a die, pyrographed, shall present with their application the labels, wrappers, or objects of which it is a question, paying for this service the sum that shall be fixed through regulation.

Art. 82. The stamp establishes a legal presumption in favor of the authenticity of the marks to which it is affixed.

Art. 83. The affixing of the stamp must be done by the Division of Industry, or at the place that shall be designated for this purpose.

Art. 84. An application intended for the affixing of the stamp must be signed by him that has obtained the registration, or be accompanied by a power of attorney of the proprietor, or by a document establishing the right of ownership to the mark to be stamped.

CHAPTER IV

Rejections

Art. 85. Registration of a mark shall be refused by the Division of Industry:

1) When the application shall not have been made according to the conditions prescribed, or when it shall not have been accompanied by the necessary documents;

2) When the Division of Industry shall have ascertained that the examples deposited are not identical;

3) When the mark constitutes an offense to good morals or to religion;

4) When it contains designs representing heads of the State, members of reigning families, escutcheons, arms or decorations, unless justification be furnished by special authorization granted by the persons of which it is a question, or by evidence of the right to make use of these escutcheons or arms;

5) When it contains individual names, firms or names of collectivities, of which the depositor may not legally make use;

6) When it contains the representation of decorations granted by the Portuguese Government;

7) When it contains designs of medals, or refers to diplomas or honorable mentions to which the depositor has no right;

8) When it contains false indications of origin;

9) When in the summary examination to which it is subjected, it is discovered that another mark is confused therewith.

Sole Paragraph. The refusal of the Division of Industry shall be communicated by this latter to the party interested, who may appeal to the Tribunal of Commerce of Lisbon within the term of three months. Unless appeal shall have been lodged during this term, the refusal shall have legal force.

CHAPTER V

Transfers

Art. 86. A mark may be transferred to one or several other proprietors together with the establishment the products of which it serves to distinguish.

Sole Paragraph. To produce all its effects in favor of the assignee, this transfer must be registered at the Division of Industry on petition of those interested, who shall produce the necessary documents, and on payment of a fee of 2,000 reis, or of this sum augmented by 500 reis for expenses of correspondence and by 500 reis per page if drawn up in the French language; there shall be delivered in exchange a Certificate of Transfer.

Art. 87. The transfer of the ownership of marks shall be effected in conformity with the provisions of Common Law.

Art. 88. Save stipulation to the contrary, it is understood that the mark accompanies the industrial or commercial establishment to which it refers.

CHAPTER VI

Nullity and Avoidance

Art. 89. The registration of a mark may be annulled on petition of a third party considering himself injured if, within the term of one year counting from the date of the registration. the party interested establishes that this mark constitutes an imitation of a mark previously registered, or is identical therewith.

Sole Paragraph. However, this cancellation may be pronounced only by the Tribunal of Commerce, to which the Divi-

sion of Industry shall furnish all the documents that shall be demanded of it.

ART. 90. He that first shall have made use of a determined mark, even when he shall not have deposited it and had it registered, may, however, appeal against the deposit and the registration that it shall be attempted to effect, or that shall already have been effected, in the name of a third party, of a mark identical with his or possible of being confused therewith.

SOLE PARAGRAPH. No objection may be admitted when there shall have elapsed more than six months counting from the date of the deposit and of the registration effected, or when the opposer shall have made use of his mark for more than six months, without having, during this time, applied for the deposit and registration of this mark.

ART. 91. There shall be considered as an imitation a mark that, being intended for objects of the same class, resembles totally or partially a registered mark, and differs so slightly from this latter that comparison alone permits of distinguishing easily the one from the other.

ART. 92. When there is no renewal on the expiration of the term of registration, the mark shall fall into public domain.

ART. 93. There shall be published monthly in the *Diario do Governo* and the *Boletim da Propriedade Industrial* a list of the marks forfeited during the preceding month, with indication of the cause of forfeiture.

CHAPTER VII

PENALTIES

ART. 94. There shall be amenable to imprisonment of from one to six months and a fine of from 10,000 to 500,000 reis, or to either of these penalties:

1) Those that have fraudulently made use of a mark registered in the name of another;

2) Those that have counterfeited or imitated a registered mark;

3) Those that, in bad faith, have sold or placed on sale objects provided with a counterfeit or imitation mark, or one employed fraudulently.

ART. 95 There shall be amenable to a fine of from 20,000 to 1,000,000 reis, and imprisonment of from six months to one year:

1) Those that have fraudulently affixed stamps of the State to marks, or that have counterfeited them;

2) Those that, in bad faith, have placed on sale objects provided with counterfeit stamps of the State.

ART. 96. There shall be amenable to a fine of from 5,000 to 100,000 reis: Those that have employed, for non-registered marks, the mention: *"Marca registrada"* (Registered mark), or the initials *M. R.*

ART. 97. Objects that, having to be provided with an obligatory mark, do not bear it, may be seized and the manufacturers, merchants, or importers, may be fined from 20,000 to 1,000,000 reis.

ART. 98. In case of repetition, the penalties of fine and imprisonment shall be doubled.

SOLE PARAGRAPH. There is repetition each time that the culprit, condemned by judgment of the court for one of the above-indicated offenses, commits a contravention of the same nature before there shall have expired five years after the said conviction.

ART. 99. Those interested may institute an action for damages and injuries for the acts mentioned under Arts. 94 and 95.

ART. 100. As guarantee of the payment of the fine or indemnity, there shall be ordered the seizure of the objects improperly and fraudulently marked or stamped.

ART. 101. The judgment that is pronounced as to the reality of the acts indicated or specified in Arts. 94, 95, and 97, may order the publication of this same judgment in three journals to be designated by the Judge, and its posting, for eight days, upon the door of the delinquent.

ART. 102. Actions relative to the contraventions above-mentioned may be lodged before the Tribunal of Commerce by any person deeming himself injured, or by the Public Minister.

SOLE PARAGRAPH. When action shall be brought by the Public Minister, the party interested shall be admitted to intervene as a civil party, while the Public Minister shall always intervene in actions lodged by the parties interested.

TRANSITORY PROVISIONS

ART. 103. Titles of ownership of marks of manufacture or of commerce granted up to the date of the present decree shall continue to be in force under the conditions established by prior legislation.

determined region of the country the special designation of a locality by which they are generally known; the designation of a factory or of a mercantile establishment that has not manufactured or dealt in them; or, finally, the inscription of a firm or of a proper name of which he may not make use;

3) Every industrial or merchant that, in his mark, indicates the country, region, or locality, of production, or designates his factory or mercantile establishment, must inscribe therewith his commercial firm or his own name;

4) And, in particular, every manufacturer of wines that, in his mark, indicates the producing country or region, must—without prejudice to what is provided above—add the name of the estate on which the wine was first made, or of the parish where that estate is situated.

ART. 6. For the effects of this law there shall only be recognized the ownership of marks of manufacture or of commerce that have been duly deposited and registered.

PARAGRAPH 1. He that has first used a determined mark of manufacture or of commerce, even though he has not deposited or registered it, may, however, oppose the deposit and registration that, in the name of another, is applied for or effected, of a like mark or one that may be confused therewith.

PARAGRAPH 2. No opposition may be admitted when more than six months have elapsed, counting from the date of the deposit and registration that has been effected, or when the petitioner has used his mark for more than six months without, during that time, having solicited the respective deposit and registration.

PARAGRAPH 3. The opposition to which the preceding articles refer shall be instituted in the form of a protest before the Office in which—according to Art. 7 of this law—it is incumbent to effect deposits and registrations; and it will give occasion to the avoidance of the deposit and registration that have been effected only when it shall be adjudged according to law by the ordinary courts and according to the terms of Common Law.

ART. 7. Deposits and registrations of marks of manufacture and of commerce shall be effected in the respective Office of the Ministry of Public Works, Commerce and Industry, on petition of those interested.

PARAGRAPH 1. The petition must be accompanied by three facsimiles of the mark to be deposited and by a certificate evidencing that no identical mark, or none so similar that it might be confused therewith, has been registered in favor of another.

PARAGRAPH 2. The minutes of deposits and registrations shall be entered in special books, from which there shall be made

up the proper titles in proof of the ownership of marks, and the certificates that those interested shall request.

Paragraph 3. For these entries, titles, and certificates, those interested shall pay the charges that are stipulated in the respective tariffs and a fixed fee of 1$000 reis for the deposit and registration.

Paragraph 4. The respective Office of the Ministry of Public Works, Commerce, and Industry shall publish the deposits and registrations that are effected, in the *Diario do Governo.*

Paragraph 5. The deposit and registration, after having been effected according to the terms indicated in the preceding paragraphs, must be registered, substantially and not in extract, in the Public Register of the Commercial Tribunal of the locality of the manufacturer or merchant that has solicited the mark.

This registration must be made on presentation of the certificate of registration effected at the Ministry of Public Works, Commerce, and Industry, along with one copy of the mark duly authenticated.

Paragraph 6. For the registration to which Paragraph 5 of this article refers, those interested shall pay the fixed fee of 1$000 reis, in addition to any others that shall be due according to the terms of law.

Art. 8. The transfer of ownership of marks of manufacture and of commerce shall be effected in accordance with the dispositions of Common Law; however, in order to have effect, according to this law, there must be effected the new deposit and registration according to the terms of the preceding articles.

CHAPTER III

Application of Official Stamps

Art. 9. To marks of manufacture or of commerce that, in accordance with the terms of the preceding chapter, have been duly deposited and registered, there may be applied an official stamp.

Art. 10. The stamp establishes the legal presumption of the authenticity of the marks to which it is applied.

Art. 11. The application of the stamp shall be effected in the competent Office of the Ministry of Public Works, Commerce, and Industry, on petition of those interested.

Paragraph 1. The petition must indicate the number and quality of the marks that it is sought to authenticate, and shall be signed by the proprietor of those marks or by his legal attorney, it being required that that signature be duly acknowledged. With this petition there shall be included a certificate that evi-

dences that the deposit and registration of those marks have been duly effected.

PARAGRAPH 2. The stamp must, whenever it be possible, strike upon a part of the mark, but in such way that it does not injure it.

ART. 12. For each stamp that is applied, the State shall collect a fixed fee of 200 reis.

CHAPTER IV

PENAL PROVISIONS

ART. 13. There shall be liable to the penalty of imprisonment of from one month to six months, and to a fine of from 10$000 to 100$000 reis, or to the latter penalty alone:

1) Those that counterfeit a mark of manufacture or of commerce;

2) Those that make use of another's or a falsified mark;

3) Those that contravene the dispositions of Nos. 2, 3, and 4 of Art. 5.

SOLE PARAGRAPH. The falsification of a mark of manufacture or of commerce consists in the integral and fraudulent reproduction of another's mark, whatever be the means employed for this.

ART. 14. There shall be liable to the penalty of imprisonment of from fifteen days to three months, and a fine of from 5$000 to 50$000 reis, or to this latter penalty alone:

1) Those that imitate a mark of manufacture or of commerce in such way that it may deceive the buyer;

2) Those that fraudulently make use of a mark that, imitating another, may be confused therewith;

3) Those that in bad faith shall sell or place on sale objects marked under the conditions of the preceding paragraphs.

SOLE PARAGRAPH. In order that there be the imitation to which this article refers, it is not necessary that the similarity between the two marks be complete; it suffices if the counterfeit mark contains indications susceptible of deceiving the buyer as to the nature or origin of the objects.

ART. 15. To those that falsify the stamps of the State, and those that fraudulently make use of counterfeit stamps, there shall be applicable the dispositions of Art. 228, and its paragraphs, of the Penal Code.

SOLE PARAGRAPH. Those that in bad faith sell or place on sale objects provided with counterfeit stamps shall incur the same penalty.

ART. 16. In case of repetition, the penalties imposed in Arts. 13 and 14 shall be doubled.

Paragraph 1. Repetition will be assumed whenever the offender—having been condemned by sentence delivered in judgment for any of the crimes foreseen in this law—shall commit another of the same nature prior to the expiration of five years from the said condemnation;

Paragraph 2. Repetition will not be assumed when the first prosecution was without avail or the offender was pardoned.

CHAPTER V

Actions and Jurisdictions

Art. 17. It is permitted to the proprietors of marks of manufacture or of commerce that deem themselves injured by the crimes foreseen and punished under Arts. 13, 14, and 15, to institute the respective criminal actions or proceedings for damages and injuries.

Sole Paragraph. These actions may not be instituted cumulatively.

Art. 18. It is incumbent on the agents of the Public Ministry:

1) To bring action for crimes forseen and punished under Arts. 13 and 15;

2) To intervene in cases that those interested may bring for the application of the penalties imposed in Art. 14.

Sole Paragraph. This is, however, without prejudice to the dispositions of Art. 27, No. 4, of the Penal Code.

Art. 19. There shall be of the exclusive competence of the Commercial or Civil Courts:

1) Actions that are intended to fix the indemnification for damages and injuries in the cases stipulated in Arts. 13 and 15;

2) Actions intended to ascertain the facts specified in Art. 14, and to fix the respective indemnity.

Sole Paragraph. In the Districts in which the Commercial Courts function, these shall be the ones competent for trying and deciding the actions that are designated in this article when they relate to marks of commerce. The Civil Courts shall be the ones competent for those actions relative to marks of manufacture; and to marks of manufacture in the Districts in which Commercial Courts do not exist.

Art. 20. There shall be of the exclusive competence of the Criminal Courts:

1) Actions intended for the ascertaining of the facts and the application of the penalties to which Arts. 13 and 14 refer;

2) Actions that shall have as end the imposition of the penalties specified in Art 14.

SOLE PARAGRAPH. Of these actions, those that are not based upon Art. 15 shall be tried correctionally.

ART. 21. The actions mentioned in No. 1 of Art. 19 may only be brought in view of sentence that has become *res adjudicata,* tried in the respective Criminal Court, in accordance with No. 1 of Art. 20, and in which the accusation made in virtue of any of the facts imputed in Arts. 13 and 15 has been pronounced according to law and proven.

SOLE PARAGRAPH. In this case the sentence of the Criminal Court shall stand as ample proof as regards the existence and truth of the fact alleged, and the Commercial or Civil Court will only have to decide whether there is occasion for indemnity for damages and injuries, and what must be its amount.

ART. 22. Likewise, the actions to which No. 2 of Art. 20 refers may only be brought when, through sentence, passed into *res adjudicata,* tried in the respective Commercial or Civil Court, in accordance with Art. 19, No. 2 and Sole Paragraph, there has been proven any of the facts mentioned in Art. 14.

SOLE PARAGRAPH. In this case the sentence of the respective Commercial or Civil Court shall be ample proof as regards the existence and truth of the fact alleged and the Criminal Court will only have to decide as to the application of the corresponding penalty.

ART. 23. For the cases to which this law refers there shall be competent the Court of the plaintiff, or of the defendant, at the election of the plaintiff.

ART. 24. In case of suspicion of any of the facts specified in Arts. 13, 14, and 15, the parties interested or the agents of the Public Minister may petition from the competent Courts and in accordance with the terms of the corresponding legislation, that seizure be made of the objects wrongly or fraudulently marked or stamped, and also of the instruments and utensils specially intended for the imitation of the marks, or for the falsification of the marks or stamps.

PARAGRAPH 1. If the seizure is made on petition of any interested party, this latter must sign a bond making him responsible for losses and damages;

PARAGRAPH 2. The seizure shall be without effect if the party that solicits it does not bring action within the term of thirty days in accordance with this law.

ART. 25. The articles seized will serve as security for the payment of the fine due to the National Treasury, when the seizure has been made on petition of the Public Minister, or for the payment of the indemnity for losses and damages, when the seizure has been petitioned by the party interested.

ART. 26. There shall be destroyed, whenever possible without injury to the respective articles, the stamps recognized as false, made in imitation, or those that do not satisfy the requirements of this law, and the instruments and utensils specially intended for the making of those marks and stamps.

ART. 27. The Court that decides regarding the existence and truth of the facts alleged and specified in Arts. 13, 14, and 15, may order that the sentence by it delivered be published in the journals that it shall designate, and posted for eight days on the door of the establishment of the offender.

CHAPTER VI

PROVISIONS RELATIVE TO FOREIGNERS

ART. 28. Foreigners that carry on an industry or commerce in Portugal shall enjoy the rights and guarantees conceded to Portuguese subjects, provided that they comply with the dispositions of the present law.

ART. 29. Foreigners whose industry or commerce is carried out without Portugal shall enjoy in this Kingdom the same rights and guarantees as the legislation of their country concedes to Portuguese subjects.

ART. 30. Products of foreign origin that on arriving in Portugal shall bear a Portuguese mark, or that bear the name or firm of an industrial or merchant here resident, or of a mercantile or industrial establishment that has its domicile here, or the designation of any locality of this Kingdom, shall be seized as soon as they reach any of the National Custom Houses.

SOLE PARAGRAPH. The seizure shall be ordered by the Director of the Custom House where those products are entered, there being drawn up a statement that shall be forwarded to the respective agent of the Public Ministry, to the end of bringing proper action.

ART. 31. The proviso of the preceding article, in the corresponding part, shall be without effect when there is presented an authentic or certified document by which it is shown that the mark, name, or firm, that is found on the goods coming from abroad is used with the consent of the party interested.

ART. 32. The dispositions of this law will not affect the stipulations of treaties and conventions already celebrated, or that shall be celebrated in the future, between Portugal and foreign nations.

CHAPTER VII

TRANSITORY PROVISIONS

ART. 33. During the first year of execution of this law,

the application for the deposit and registration of marks of manufacture and of commerce shall be drawn up, not only with the negative certificate to which Art. 7, Paragraph 1, refers, but together with the certification of a sentence that, in a judicial process in a justification suit, has recognized the petitioner to be the true author of the mark that he desires to register.

SOLE PARAGRAPH. There shall be excepted those marks already registered with the Tribunal of Commerce, the deposit and registration of which may be effected in the Ministry of Public Works on presentation of the certificate that proves that prior registration.

ART. 34. The Government shall make the tariffs and regulations that may be necessary for the execution of the present law.

ART. 35. All legislation to the contrary is revoked.

PORTUGUESE COLONIES

DECREE EXTENDING THE APPLICATION OF THE PROVISIONS RELATIVE TO INDUSTRIAL PROPERTY* TO THE PROVINCES OF ULTRAMAR, TO THE AUTONOMOUS DISTRICT OF TIMOR AND TO THE TERRITORIES PLACED UNDER THE ADMINISTRATION OF THE MOZAMBIQUE AND NYASSA COMPANIES

DECEMBER 17, 1903

CHAPTER I

. . . . . .

CHAPTER II

INDUSTRIAL AND COMMERCIAL MARKS

ARTICLE 5. Every industrial, merchant or agrarian, Portuguese or foreign, having a mark of manufacture or of commerce registered in the National Register of the Minister of Public Works, of Commerce and Industry, shall have right to this being protected, in conformity with the provisions of the present decree, in the Provinces, the District and the Territories mentioned in the first article (Provinces of Ultramar, Autonomous District of Timor, and Territories subject to the administration and to the exploitation of the Mozambique and Nyassa Companies. *Ed.*), with the guarantees that the legislation in force in the mother country confers upon him.

ART. 6. The protection granted in virtue of the present decree to the ownership of registered marks shall endure as long as it shall hold in the mother country, and shall cease in case of avoidance or of expiration of the corresponding registration at the Ministry of Public Works, of Commerce and of Industry.

ART. 7. Industrials, merchants or agrarians mentioned in Art. 5 that shall desire to have extended to one or more Provinces of Ultramar or to the Autonomous District of Timor the protection granted to their marks in the mother country, shall deposit with the Direction General of Commerce and Industry:

* Provisions not relating to trade marks are omitted.

a) An application, drawn up in Portuguese, indicating the Province or Provinces of Ultramar or the Autonomous District in which they desire that their marks be protected;

b) As many certificates of registration of each mark, delivered by the Bureau of Industrial Property, as shall be necessary for the Provinces of Ultramar or the Autonomous District in which they apply for the obtention of protection;

c) As many *clichés* for the typographic reproduction of each mark as are necessary for the Provinces of Ultramar or the Autonomous District for which protection is petitioned;

d) Statements with declaration attesting that the tax indicated in Art. 8 has been paid for all the marks to be protected in each of the Provinces of Ultramar or in the Autonomous District.

Sec. 1. When it shall be a question of obtaining the protection of a mark of manufacture or of commerce in the Province of Mozambique, the petitioner shall deposit, in addition to the certificates and *clichés* indicated under letters (b) and (c) of the present article, as many other certificates and *clichés* as there shall be Territories of the Mozambique or Nyassa Companies in which protection is to be exercised.

Sec. 2. The *cliché* mentioned under letter (c) may be of copper or of any other material suitable for printing with ordinary printing type. None of its superficial dimensions shall be less than fifteen millimeters nor more than one hundred millimeters; it shall have a height of twenty-four millimeters and shall reproduce the mark in its smallest detail.

Art. 8. Those interested shall have to pay for each mark to be protected a fee of 2$500 for each Province or the Autonomous District of Ultramar.

This fee shall be paid to the Bank of Portugal, to the order of the Ministry of Marine or of Colonial Affairs, through instructions delivered by the Bureau of Industrial Property.

Sole Section. A fee of the same amount shall be paid for the renewal, the modification, or the transfer of each mark.

Art. 9. The petitions mentioned under letter (a) of Art. 7 shall be submitted to the decision of the Direction General of Commerce and Industry, which shall give course thereto when the petitioner shall have satisfied the conditions indicated in the same article.

Sole Section. Following the decision of which it is a question, proceedings shall be taken to the Bureau of Industrial Property:

a) For the registration of the concession in the Register intended therefor;

b) For the endorsement, upon each one of the certificates of which mention is made under letter (b) and under the first section of Art. 7, of a mention evidencing this registration.

ART. 10. The Direction General of Commerce and Industry shall forward each month to the Direction General of Colonial Affairs:

1) The certificates mentioned under letter (b) and under the first section of Art. 7;

2) As many *clichés* for the typographical reproduction of each mark as there are indicated under letter (c) and under section 1 of Art. 7;

3) A list of the statements mentioned under letter (d) of Art. 7 for each Province of Ultramar or Autonomous District for which the protection of marks has been granted;

4) A note of modifications, transfers, renewals, avoidances and expirations of marks, in as many copies as shall be necessary for the Provinces, the Autonomous District and the Territories mentioned in the first article, for which the protection of marks in question has been granted.

SOLE SECTION. The documents designated under Nos. 1, 3 and 4 of the present article shall be inscribed in a special Register in the competent Bureau of the Direction General of Colonial Affairs.

ART. 11. The Direction General of Colonial Affairs shall forward to the Governor of each of the possessions of Ultramar the documents indicated under Nos. 1 and 4, and the *clichés* mentioned under No. 2 of Art. 10, mention being made of the Territory of this possession that is found under the direct administration of the State, to the end that these documents be published in the respective official bulletin and that the *clichés* be duly preserved in the archives.

SEC. 1. The documents and the *clichés* concerning the Territories that are found under the administration and the exploitation of the Mozambique and Nyassa Companies shall be delivered by the Direction General of Colonial Affairs to the Deputy Administrators of these Companies, through intermediary of the respective Commissioners of the Government, to the end of being sent by the same Administrators to the Governor of the Territories, which shall have published in the bulletins of the Companies the documents indicated under Nos. 1 and 4 of Art. 10, and shall have the *clichés* duly deposited in the archives.

SEC. 2. The documents designated under No. 3 of Art. 10 shall be forwarded by the said Direction General to the Seventh Bureau of Public Accounts.

CHAPTER III

General Provisions

Art. 12. The proceeds arising from the payment of the fees mentioned under . . . Art. 8 of the present decree shall constitute a special fund of the Ministry of Marine and of Colonial Affairs (Direction of Colonial Affairs), to be applied to the expenses of the Statistical Service of Colonial Affairs and of the publications that pertain thereto.

Art. 13. The provisions of the present decree with reference to industrial and commercial marks shall become effective counting from May 1, 1904.

Art. 14. All legislation to the contrary is repealed.

RHODESIA

REGISTRATION REGULATIONS NO. 59 OF APRIL 6, 1897

Trade Mark—Repeals

1. So much of the Act of the Colony of the Cape of Good Hope No. 22 of 1877* entitled "An Act to establish a Register of Trade Marks in this Colony," or any other law as may be repugnant to or inconsistent with these regulations, shall be and the same are hereby repealed.

Requisites

2. For the purposes of the "Trade Marks Registration Act, 1877," a trade mark must henceforth consist of or contain at least one of the following essential particulars:—

(a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner, or

(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark;

(c) A distinctive device, mark, brand, heading, label, or ticket; or

(d) An invented word or invented words; or

(e) A word or words having no reference to the character or quality of the goods, and not being geographical name,

and there may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words, or figures, or any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark and must disclaim in his application any right to the exclusive use of the added matter.

Proviso

Provided as follows:—

(1) A person need not under this section disclaim his own name or the foreign equivalent thereof or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(2) Any special and distinctive word or words, letter, fig-

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*To the end that the two laws may be read together, the Act of the Colony of the Cape of Good Hope, No. 22 of 1877, is appended.

ure or combination of letters or figures, or of letters and figures, used as a trade mark before the Eighth day of August, One thousand eight hundred and seventy-seven may be registered as a Trade Mark under the said Act.

TITLE

3. These regulations may be cited as "The Trade Marks Registration Regulations, 1897."

ACT NO. 22 OF AUGUST 8, 1877*

Preamble

Whereas it is expedient to establish in this colony a register of trade marks: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Register to be kept by Registrar of Deeds

I. A register of trade marks as defined by this Act and of the proprietors thereof shall be established and kept by the registrar of deeds in the office of the said registrar of deeds; and from and after the first day of July, one thousand eight hundred and seventy-eight, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade mark as defined by this Act until and unless such trade mark is registered in pursuance of this Act.

How to be registered

II. A trade mark must be registered as belonging to particular goods or classes of goods, and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill, but subject as aforesaid, registration of a trade mark shall be deemed to be equivalent to public use of such mark.

Effect of registration as first proprietor

III. The registration of a person as first proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of such trade mark, and shall after the expiration of five years from the date of such registration be conclusive evidence of his right to the exclusive use of such trade mark, subject to the provisions of this Act as to its connection with the goodwill of a business.

*To be read with preceding law of Rhodesia, subject to proviso of Sec. 1.

Effect of registration as subsequent proprietor

IV. Every proprietor registered in respect to a trade mark subsequently to the first registered proprietor shall as respects his title to that trade mark stand in the same position as if his title were a continuation of the title of the first registered proprietor.

Court may be applied to in certain cases to rectify register

V. If the name of any person who is not for the time being entitled to the exclusive use of a trade mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade marks as a proprietor of such trade mark, or if the registrar refuses to enter on the register as proprietor of a trade mark the name of any person who is for the time being entitled to the exclusive use of such trade mark in accordance with this Act, or otherwise in accordance with law, or if any mark is registered as a trade mark which is not authorized to be so registered under this Act, any person aggrieved may apply in the prescribed manner for an order of the court that the register may be rectified, and the court may either refuse such application, or it may, if satisfied with the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved. Where each of several persons claims to be registered as proprietor of the same trade-mark, the registrar may refuse to comply with the claims of any such persons until their rights have been determined by the court, and the registrar may himself submit or require the claimants to submit in the prescribed manner their rights to the court. The court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade mark as is authorized to be registered under this Act; also any question relating to the right of any person who is party to such proceeding to have his name entered on the register of trade marks, or to have the name of some other person removed from such register; also any other question that it may be necessary or expedient to decide for the rectification of the register. Whenever any order has been made rectifying the register, the court shall by its order direct that due notice of such rectification be given to the registrar.

Certain trade marks not to be registered without special leave of court

VI. The registrar shall not, without the special leave of the court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade mark identical with one which is already registered with respect to

such goods or classes of goods, and the registrar shall not register with respect to the same goods or classes of goods a trade-mark so nearly resembling a trade mark already on the register with respect to such goods or classes of goods as to be calculated to deceive. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would not by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a court of equity in England, or any scandalous designs.

Registrar may make general rules

VII. The registrar of deeds may from time to time, with the consent of the Governor as to fees, make and, when made, alter, annul, or vary such general rules as to the registry of trade marks, and as to notices to be given by advertisement before the registration of trade marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade marks, and as to the fees to be charged for registration, and also for the continuance of a trade mark on the register or otherwise and as to the removal from the register of any trade mark, as to notices and as to the persons entitled to inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the court in any matter in which the judgment or leave of the court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient. Any rules made in pursuance of this section shall be forthwith laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting, then within ten days after the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament: Provided that if either House of Parliament resolve, within one month after such rules have been laid before such House that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

Effect of registrar's certificate

VIII. The certificate of the registrar as to any entry, matter, or thing which he is authorized by this Act or any general rules made thereunder to make or do, shall be evidence of such entry having been made, and of the contents thereof, and of such matters and things having been done or left undone.

Definition of terms

IX. For the purposes of this Act:

A trade mark consists of one or more of the following essential particulars, that is to say,

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

A written signature or copy of a written signature of an individual or firm; or

A distinctive device, mark, heading, label, ticket; or

And there may be added to any one or more of the said particulars any letters, words, or figures, or combination of letters, words, or figures; also

Any special and distinctive word or words, or combination of figures or letters used as a trade mark before the passing of this Act may be registered as such under this Act.

"Prescribed" means prescribed by general rules made in pursuance of this Act, and

"Court" means the supreme court, or as to matters within the districts over which the court of the eastern districts has jurisdiction, the court of the eastern districts, or any court which may be declared to be a court for the purposes of this Act, by such general rules as aforesaid.

Short title

X. This Act may be cited for all purposes as the "Trade Marks Registration Act, 1877."

RUMANIA

LAW OF APRIL 15/27, 1879

TITLE I

Ownership of Trade Marks

Article 1. There shall be considered as marks of manufacture or of commerce the different signs serving to distinguish the products of a manufacturer, such as: the name under a special form, denominations, imprints, stamps, seals, reliefs, vignettes, figures, wrappers and other such.

Art. 2. There shall not be considered as marks of manufacture or of commerce letters or monograms, the arms of the State or of a Commune, that it has been the custom to affix to such products.

Art. 3. The use of a mark of manufacture or of commerce is optional; however, for pharmaceutical products and for those that concern more particularly hygiene and public health, the Government may declare marks of manufacture or of commerce obligatory, and even, in special cases, through a decree rendered in the form of a public administrative regulation.

Art. 4. A mark adopted by a merchant or a manufacturer may not be employed by another merchant or manufacturer for distinguishing goods of the same nature.

Art. 5. The right that a merchant or a manufacturer has to a mark of commerce or of manufacture shall cease at the same time as the business or the manufacture for which it has been adopted. However, a mark of manufacture is transferable.

In case of transfer, the assignee or the successor shall be bound to petition the transcription of the mark to his name within the term of three months; this delay once expired, the right to the mark shall cease unless the transcription shall have been made.

Art. 6. No one shall have the right of availing himself of a mark adopted by another merchant or manufacturer for marking goods, nor the business name or the denomination adopted for designating an establishment.

Art. 7. Merchants or manufacturers that desire to claim the exclusive ownership of a mark shall be bound to deposit two copies of the design of this mark with the clerk of the Tribunal of Commerce of their domicile. One copy shall be annexed to the Trade Mark Register of the Tribunal of Commerce and the

other, legalized by the Tribunal, shall be delivered to the merchant or manufacturer.

ART. 8. The deposit of a mark of commerce or of manufacture shall be valid for fifteen years. The ownership of this mark may be extended for another term of fifteen years if the deposit thereof is renewed on the expiration of the first term.

ART. 9. Application for registration of each mark of commerce or of manufacture shall be made at the Tribunal of Commerce upon stamped paper of twenty lei.

TITLE II

PROVISIONS CONCERNING FOREIGNERS

ART. 10. Foreigners that possess in Rumania industrial or commercial establishments shall have the benefit, for the products of their establishments, of the rights accorded by the present law, if they fulfill the formalities that it prescribes.

ART. 11. Rumanians, as well as foreigners, whose industrial or commercial establishments are situated without Rumania, shall have the benefit of the rights accorded by this law for the products of their establishments, if, though diplomatic conventions concluded with the States in which these establishments are located, reciprocity is provided for Rumanian marks of manufacture.

In this case, foreign marks shall be filed with the Clerk of the Tribunal of Commerce of the District Ilfoj (at Bucarest).

TITLE III

PENALTIES FOR VIOLATION AND NON-OBSERVANCE OF THE PRESENT LAW

ART. 12. They shall be punishable by a fine of from 50 to 2500 lei, and by imprisonment of from three months to three years, or by either one of these penalties:

1) That shall have counterfeited a mark or shall have used a counterfeit mark;

2) That shall have fraudulently applied to their products or to the goods of their trade a mark belonging to another;

3) That shall have sold, knowingly, or shall have placed on sale one or more products bearing a counterfeit or fraudulently applied mark.

ART. 13. They shall be punishable by a fine of from 50 to 1500 lei, and by imprisonment of from one month to one year, or by either of these two penalties:

1) That, although not having counterfeited a mark, shall have imitated it in a fraudulent manner, so as to be possible of

deceiving the purchaser, or even shall have employed a fraudulently imitated mark;

2) That shall have employed a mark bearing indications possible of deceiving the purchaser as to the nature of the product;

3) That, knowingly, shall have sold or placed on sale one or more products bearing a fraudulently imitated mark, or bearing indications possible of deceiving the purchaser regarding the nature of the product.

ART. 14. They shall be punishable by a fine of from 50 to 1000 lei, and by imprisonment of from fifteen days to six months, or by either of these penalties:

1) That shall not have applied to their goods a mark declared obligatory;

2) That shall have sold or placed on sale one or more products not bearing the mark declared obligatory for these classes of products;

3) That shall have violated the provisions of decrees rendered for the execution of Art. 3 of the present law.

ART. 15. The penalties established by the present law may not be cumulative. There shall be pronounced the greatest penalty for all acts committed prior to the first prosecution.

ART. 16. The penalties prescribed by Arts. 12, 13 and 14 may be doubled in cases of repetition.

Repetition shall be assumed when there shall have been pronounced against the accused, within the five years preceding, a condemnation for one of the crimes foreseen by the present law.

ART. 17. Art. 60 of the Penal Code may be applied to the crimes foreseen by the present law.

ART. 18. Offenders may be deprived, for a term that shall not exceed ten years, of the right to take part in the elections of Chambers of Commerce and other public institutions of an industrial or commercial nature that shall have occasion for elections.

At the same time, the Tribunal may order the posting of the judgment in places that it shall designate, as well as its total or partial insertion in journals that it shall designate, all this at the expense of the condemned.

ART. 19. The Tribunal may order the confiscation or the destruction of the products the mark whereof shall be recognized as contrary to the provisions of Arts. 12 and 13, as well as of the instruments and utensils employed for the accomplishment of the crime, and this even in case of acquittal.

The Tribunal may order that the confiscated products be

adjudged to the owner of the mark that has been counterfeited or fraudulently affixed or imitated, in addition to the damages and injuries, if it so deems expedient.

In every case the Tribunal shall order the destruction of the marks that have been recognized as contrary to the provisions of Arts. 12 and 13.

ART. 20. In the cases provided for in paragraphs 1 and 2 of Art. 14, the Tribunal shall always prescribe that marks declared obligatory be affixed to the goods that are subject to this obligation.

The Tribunal may pronounce confiscation of the goods, if the defendant, within the five years preceding, shall have been convicted of crimes foreseen in the first two paragraphs of Art. 14.

ART. 21. Judgment for these infractions shall be given preference.

TITLE IV

JURISDICTION

ART. 22. Civil actions relative to marks of manufacture or of commerce shall be submitted to the Tribunals of Commerce and shall be judged as summary matters.

In case of action brought criminally, if the defendant raises in his defense questions relative to the ownership of the mark, the Criminal Court shall decide regarding the exception.

ART. 23. The owner of a mark of manufacture or of commerce that shall prove that there have been marked certain goods to his prejudice and in contravention of the provisions of the present law, may have a detailed description of these products made by the bailiff, by virtue of an order of the President of the Tribunal of Commerce of First Instance, or the Justice of the Peace of the *Arrondissement,* in case of the absence of a Tribunal in the locality in which are found the goods that are to be described or seized.

The order shall be made following a simple petition, and after the presentation of the *procès-verbal* evidencing that the deposit of the mark has been effected.

The order may, if such be necessary, comprise also the nomination of an expert who shall assist the bailiff in the description that he is to make.

If the complainant demands that the goods be seized, the judge may require of him a bond that must be deposited before proceeding to the seizure of the goods.

A copy of the order of the Tribunal and of the act evidencing the deposit of the bond shall be left with the owner of the

goods described or seized, all this under penalty of nullity and of damages and injuries against the bailiff.

ART. 24. In the case in which the complainant shall not have brought action, either civil or criminal, within a term of twenty days, the description or the seizure shall be void at law, without prejudice to damages and injuries or complaint before the Criminal Courts.

TITLE V

GENERAL AND TRANSITORY PROVISIONS

ART. 25. There shall not be imported into Rumania any foreign products bearing a mark or the indication of the name or of the place of a Rumanian factory; such products shall be excluded from transit and storage and may be seized at any place in which they shall be found, either by the Customs Administration or as the result of a demand of the Public Ministry or of a claim by the party injured.

In the case in which the goods shall be seized by the Customs Administration, the *procès-verbal* that evidences this act shall be forwarded directly to the Public Ministry.

The term, during which the action provided for by Art. 24 must be brought, under penalty of nullity of the seizure, whether it originate from the injured party, or whether it originate from the Public Ministry, is fixed at two months.

The provisions of Art. 19 shall be applicable also to goods seized by virtue of the present article.

ART. 26. All the provisions of the present law shall be applicable to wines, spirits and other beverages, to livestock, to grains, flour, and, in general, to all products of agriculture.

ART. 27. All manufacturers, merchants, or agrarians, that possessed marks before the promulgation of this law may acquire the right of exclusive ownership as to these marks only after this law shall have become effective.

ART. 28. To this end, there is granted to them a term of three months, counted from the coming into effect of the law, on condition that each of those that desire to become owners of the mark that they have adopted have it registered within the term stipulated.

At the same time there is granted to these manufacturers, merchants or agrarians that shall make applications for registration within the term fixed in the first paragraph of this article priority over those that shall have made their application before them, but who did not possess such mark before the promulgation of the present law.

ART. 29. If it happens that, before the promulgation of

this law, several persons shall have had the same mark, the exclusive right to this mark shall be attributed to the one of them that shall have applied for registration within the term fixed by Art. 28, and who shall be able to prove by documentary evidence that he has made use of this mark prior to the others.

In case of dispute, the question shall be submitted to the Tribunal of Commerce, which shall decide, after having consulted the documents relative to the time since which each of the applicants has been in possession of the mark contested.

When none of them can prove with documentary evidence that he is the oldest possessor of the mark, drawing by lot will decide among the claimants.

ART. 30. For marks that shall be registered after the term fixed by Art. 28, the claim of priority may no longer be availed of if the claimants have proven with documentary evidence that they have possessed this mark before the promulgation of the present law.

ART. 31. The present law shall become of effect one month after publication in the *Moniteur* of the decree of promulgation.

A public administrative regulation will determine the formalities to be fulfilled for the deposit and the publication of marks, and all other measures necessary for the execution of the law.

ART. 32. All prior provisions contrary to the present law are and shall remain abrogated.

RUSSIA

Russia at the present time has no trade mark law. (The Russian law was that of February 26/March 9, 1896, as contained in and has been adopted by Esthonia with slight modification, which see.)

ST. LUCIA
COMMERCIAL CODE, 1916
TITLE X
PATENTS, DESIGNS AND TRADE MARKS*

PART III
TRADE MARKS

CHAPTER I
Registrable Trade Marks

Trade mark must be for particular goods

672. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks

673. A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Attorney-General or the Court, be deemed a distinctive mark;

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the commencement of this Code, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Title.

* Matter not relating to trade marks omitted.

For the purposes of this Article "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade marks

674. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration

675. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

CHAPTER II

Registration of Trade Marks

Application for registration

676. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Title the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Attorney-General or to the Court at the option of the applicant.

(4) An appeal under this Article shall be made in the prescribed manner, and on such appeal the Attorney-General or the Court, as the case may be, shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this Article shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Attorney-General or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of application

677. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration

678. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Attorney-General.

(6) An appeal under this Article shall be made in the prescribed manner, and on such appeal the Attorney-General or

the Court, as the case may be, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.

(8) In proceedings under this Article no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinabove provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this Article, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar, or, in the case of an appeal to the Attorney-General, the Attorney-General shall have power in proceedings under this Article to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers

679. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Attorney-General or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose

of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration

680. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Attorney-General otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Title to be the date of registration.

Certificate of registration

681. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Colony.

Non-completion of registration

682. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

CHAPTER III

Identical and Associated Marks

Identical trade marks

683. Except by order of the Court or in the case of trade marks in use before the commencement of this Code, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

684. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be

registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Attorney-General.

Concurrent user

685. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

ASSOCIATED TRADE MARKS

686. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks

687. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purpose of this Title be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

688. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) Statements of the goods for which they are respectively used or proposed to be used; or

(b) Statements of number, price, quality, or names of places; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) Colour; seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks

689. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Title user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

ENGLISH TRADE MARKS

690. The proprietor of any trade mark registered in England may, if such trade mark is not already registered in the Colony in respect of the same or similar goods, obtain the registration of such trade mark by lodging with the Registrar a sealed and certified copy of the entry of such trade mark in the English Register. It shall not be necessary to advertise the application for registration.

SPECIAL TRADE MARKS

Standardisation

691. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Attorney-General may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Attorney-General.

CHAPTER IV

ASSIGNMENT AND RENEWAL

Assignment and transmission of trade marks

692. A trade mark when registered shall be assigned and

transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this Article contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any place, outside the jurisdiction in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Apportionment of marks on dissolution of partnership

693. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Title as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think expedient.

Duration of registration

694. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Title.

Renewal of registration

695. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration

696. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade marks

697. Where a trade mark has been removed from the reg-

ister for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

Removal for non-user

698. It shall be a ground for the removal of a trade mark from the register that such trade mark was not intended to be used or has not in fact been used in connection with the goods for which it is registered, either since the date of registration, or for five years preceding the petition for removal, unless it appears to the Court that such non-user arose from special circumstances and not from the intention not to use or to abandon the use of such trade mark in connection with such goods.

CHAPTER V

Effect of Registration

Powers of Registered Proprietor

699. (1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment.

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

700. The registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered. Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be prima facie evidence of validity

701. In all legal proceedings relating to a registered trade

mark the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years

702. In all legal proceedings relating to a registered trade mark the original registration of such trade mark shall after the expiration of seven years from date of such original registration (or seven years from the commencement of this Code, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of Article 675 of this Code:

Provided that nothing herein shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods in case of concurrent user.

Unregistered trade mark

703. No persons shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the commencement of this Code, and has been refused registration under this Title. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement

704. In an action for the infringement of a trade mark, the Court may admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of name, address or description of goods

705. No registration made hereunder shall interfere with any *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing-off" action

706. Nothing herein contained shall be deemed to affect

rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

PART IV

GENERAL

CHAPTER I*

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS

707. (1) If His Majesty is pleased, by Order-in-Council, to apply the provisions of section 91 of the Patents and Designs Act, 1907†, to this Colony, then any person who has applied for protection for any . . . trade mark in the United Kingdom or in any foreign state with which His Majesty has made arrangement under the said section, or his legal representative or assignee, shall be entitled to . . . registration of his . . . trade mark hereunder in priority to other applicants; and the . . . registration shall have the same date as the date of the application in the United Kingdom or such foreign state.

Provided that:

(a) That application is made . . . in the case of a . . . trade mark within four months from the application for protection in the United Kingdom or in such foreign state; and

(b) Nothing in this Article shall entitle the . . . proprietor of the . . . trade mark to recover damages for infringements happening prior to the actual date on which his . . . trade mark is registered, in this Colony.

(2) The . . . registration of a trade mark . . . shall not be invalidated

. . . . . .

(c) In the case of a trade mark, by reason only of the use of the trade mark in this Colony during the period specified herein as that within which the application may be made.

(3) The application for . . . the registration of a trade mark under this Article must be made in the same manner as an ordinary application under this Title:

Provided that:

. . . . . .

(b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the third part of this Title.

(4) The provisions of this Article shall apply only in the case of those foreign states with respect to which His Majesty

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* Matter relating to patents and designs is omitted.
†For text of provisions, see Great Britain.

by Order-in-Council declares them to be applicable, and so long only in the case of each state as the Order-in-Council continues in force with respect to that state.

(5) Where it is made to appear to the Governor in Council that the legislature of any British possession has made satisfactory provision for the protection of . . . trade marks . . . registered in this Colony, the Governor in Council may apply the provisions of this Article to that possession, with such variations or additions, if any, as may seem fit.

CHAPTER II

Definitions

Registrar and Office

708. The Registrar of the Royal Court, or such other officer as the Governor may appoint, shall be the Registrar of Patents, Designs, and Trade Marks, and the office of the Registrar of the Royal Court, or such other office as the Governor may prescribe, shall be the Registry of Patents, Designs and Trade Marks.

Interpretation

709. In this Title, unless the context otherwise requires:

. . . . . .

A "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

A "trade mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

A "registrable trade mark" means a trade mark which is capable of registration under the third part of this Title.

A "registered trade mark" means a trade mark which is actually upon the register.

"Prescribed" means, in relation to proceedings before the Court, prescribed by rules of Court; in other cases, prescribed by the provisions of this Title or of any rules appended to or made thereunder.

"The Court" means the Royal Court.

CHAPTER III

The Register

710. There shall be kept at the Registry for the purposes

of this Title a book called the Register of Patents, Designs, and Trade Marks.

. . . . . .

All registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations and all matters prescribed in relation to trade marks shall also be entered in a separate section of the register.

. . . . . .

No trust to be entered

711. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and extract from register

712. The register shall during the prescribed hours be open to the inspection of the public; certified copies of any entry in the register shall be given to any person requiring the same on payment of the prescribed fee; and it shall be kept generally in accordance with the regulations set forth in the Code of Civil Procedure in relation to registers required to be kept by law.

Publication of annual list

713. The Registrar shall cause to be published at the end of every financial year a list of all . . . trade marks registered during the preceding year, and any further information that he may deem expedient.

Transmission of copies to England

714. Copies . . . of all published lists of registered . . . trade marks shall be transmitted to the Comptroller of Patents, Designs, and Trade Marks in England.

CHAPTER IV

Correction and Rectification of Register

Power for Registrar to correct clerical errors

715. The Registrar may, on request in writing accompanied by the prescribed fee:

(a) Correct any clerical error in or in connection with an application . . . for registration of a . . . trade mark.

(b) Cancel the registration of a . . . trade mark either wholly or in respect of any particular goods in connection with which the . . . trade mark is registered.

(c) Correct any clerical error . . . in the name or address of the proprietor of any . . . trade mark, or in any other

matter which is entered upon the Register of Patents, Designs, and Trade Marks.

Entry of assignments and transmissions in registers

716. (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a . . . trade mark, the Registrar shall on request and on proof of title to his satisfaction, register him as the proprietor of such . . . trade mark.

. . . . . .

(4) The person registered as the proprietor of a trade mark may, by leave of the Registrar, add to or alter the same in any way not substantially affecting the identity of such trade mark. If leave be granted, the trade mark so altered shall be advertised in the prescribed manner.

Rectification of registers by Court

717. (1) The Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of Patents, Designs and Trade Marks, of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining in either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.

(2) The Court may in any proceedings under this Article decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this Article.

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the register accordingly.

Registrar to have notice of proceeding for rectification

718. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

COSTS

Costs of proceedings before the Court

719. In all proceedings before the Court under this Title the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the cost of any other of the parties.

CHAPTER V

OFFENCES

Falsification of entries in register

720. If any person makes or causes to be made a false entry in the register kept under this Title, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

. . . . . .

Unauthorised assumption of Royal Arms

722. If any person, without the authority of His Majesty, uses in connection with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized to use the Royal Arms, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

Penalty on falsely representing a trade mark as registered

723. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purpose of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

CHAPTER VI

SUPPLEMENTAL PROVISIONS

Evidence

724. In any proceedings hereunder before the Attorney-General or Registrar, the evidence shall be by affidavit in the absence of directions to the contrary. In case any part of the evidence is taken orally, the Attorney-General or Registrar

shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as an examiner appointed by the Court.

Extension of time

725. The Attorney-General may extend any delay prescribed hereunder on the ground either that the applicant does not reside in the Colony or that it is difficult to obtain expert advice therein.

. . . . . .

FEES

Schedule

728. There shall be paid to the Registrar in respect of the several matters mentioned in the Schedule to this Title the several fees therein specified, or such smaller fees as the Governor in Council may from time to time direct.

Appeals

729. Subject to Rules of Court, an appeal from any order or decision made or given in an action for infringement or other proceeding before the Royal Court under this Title shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Royal Court in cases within its ordinary jurisdiction.

Rules and forms

730. The Governor in Council may make and prescribe rules and forms for carrying into effect the objects of this Title; but until such rules and forms are made and prescribed, and so far as the same do not extend, the rules and forms for the time being in force in England shall be used in all cases to which they are applicable; and shall be modified as directed by the Registrar to meet other cases.

ST. VINCENT

This colony has no proper trade mark law.

Merchandise Marks Ordinance, 1888, No. 8, substantially like Great Britain: Merchandise Marks Ordinance, which see.

SALVADOR

LAW OF JULY 22, 1921

CHAPTER I

Trade Marks and their Ownership

Article 1. There shall be considered as a mark of manufacture or of commerce any sign with which are distinguished the products of a factory, of agriculture, or the objects of a business.

Art. 2. A mark may consist in all that is not prohibited by law and that serves for distinguishing some articles from others, identical or similar—but of different origin.

Art. 3. There may not be registered as marks:

1) National or Municipal standards, emblems or arms, or the standards or arms of foreign nations;

2) The form or color of the article;

3) General terms or expressions used for distinguishing an article, or that do not present the characteristic of novelty with relation to the article on which they are used, in any language whatsoever;

4) Designations that generally are used in Spanish or other language for indicating the nature of the article, its class or quality;

5) Immoral expressions or designs;

6) The name of a natural or legal person, unless it be presented in a peculiar or distinct form;

7) A mark already registered or used by another, or similar thereto if it shall have been intended for articles of the same nature;

8) The name or portrait of a person if this latter or his heirs shall object;

9) The distinctives of the "Red Cross"; but mercantile persons or societies that shall have used them up to the present time, duly registered, shall not be molested or obliged to introduce any modifications, without prejudice to the arrangements that the Commission of the Red Cross may make.

Art. 4. Any owner of a trade mark, whether it be national or foreign, may acquire the exclusive right of using it in the Republic, by subjecting himself to the responsibilities of the present law.

Art. 5. The right of making opposition to the use of any mark that may, directly or indirectly, produce confusion be-

tween goods, shall pertain to the manufacturer, merchant or agrarian that shall have fulfilled the requisites demanded by law.

ART. 6. The ownership of a mark shall pass to the heirs and may be transferred by contract.

ART. 7. The assignment or sale of the establishment comprehends that of the mark, save stipulation to the contrary, and the assignee shall have the right of availing himself of the said mark, even though it be a name, in the same way as the assignor did, without restrictions other than those expressly imposed in the instrument of assignment.

ART. 8. The transfer of a mark must be shown in an authentic instrument, which shall be presented at the Patent Office for its inscription in the book of registration of assignments of trade marks. The assignment shall be made to appear in a memorandum on the margin of the original registration and the instrument of assignment shall be returned with endorsement of being registered.

ART. 9. The registration of a mark shall give the right of making use thereof exclusively for the goods for which it is intended and for others comprised in the class to which said goods belong.

ART. 10. The mark must necessarily be used on the goods for which it is intended. If it shall not be used within one year counted from the inscription of the registration, or shall cease to be used for one year, its avoidance may be petitioned. If the mark is foreign, the importation of the article into Salvador is not necessary and the registration shall not become invalid if fulfillment be made without the Republic of the dispositions of this article.

CHAPTER II

APPLICATION AND REGISTRATION

ART. 11. Whoever desires to obtain the exclusive ownership of a mark of manufacture, commerce or agriculture, shall petition it at the Patent Office, limiting the application to a single mark, even though two or more marks refer to a single article, except when the mark consists of two or more words or phrases of which one shall be a translation of the other; in this case there shall be made an application by including all the marks, but the fees and taxes shall be paid for each.

ART. 12. In the application there shall be given:

1) The name, profession and domicile of the owner of the mark;

2) A detailed description of the mark, determining its essential parts and the reservations that shall be made with

reference to these. If the color of the mark constitutes an essential part thereof by way of a distinctive element, a special description of the colors shall be made;

3) The designation of the article or articles for which the mark is intended;

4) The nationality of the mark;

5) The name of the factory, if it should have such;

6) The name of the country and of the city or place where the article is principally manufactured or distributed.

ART. 13. With the application there shall be included:

1) The documents by which is legitimized the personality of the applicant, if it be necessary;

2) Twenty facsimiles of the mark. If the color of the mark constitutes an essential part thereof by way of a distinctive element, the facsimiles shall be of corresponding colors;

3) An electrotype of the mark, the height whereof shall be from twenty to thirty millimeters and its length and breadth from fifteen to one hundred millimeters;

4) The receipt for the registration fees issued by the corresponding office.

ART. 14. The application being presented, the Patent Office shall make note of the day and hour of presentation and shall number and sign each one of its sheets.

ART. 15. If the Patent Office shall find that the application is in accordance with the laws and the mark is of those whose registration is not prohibited, it shall admit the application and shall order an extract thereof to be published, along with the facsimile of the mark, three times in the official periodical.

ART. 16. Ninety days having expired, counted from that following the third publication, without opposition being presented, declaration shall be made that the mark is the property of the applicant and an order shall be given to register and draw up the respective certificate.

ART. 17. In case of opposition being presented within said term, order shall be made to suspend the procedure of registration and the parties shall be notified to establish their rights before the corresponding tribunals. The opposer must present at the Patent Office, within the ninety days following the date of the presentation of the opposition, a certification of having filed the corresponding application. If that certification is not presented within said term, the registration shall be ordered, on petition of the party interested, and the opposer shall be condemned to costs, damages and injuries. If the certification of the application having been filed shall be presented within said term, there shall continue suspended the procedure of

registration until there be presented the writ of execution or the certification of the favorable sentence that shall have resulted in court, and then, on petition of the party, registration shall be made, if the applicant be victorious, or it shall be declared rejected in the contrary case.

If the applicant for registration of a mark or the opposer shall desire to withdraw his application or opposition before the case is brought before the common tribunals, the Patent Office shall hear the other party and, if this latter shall accept the withdrawal, it shall decide accordingly; if he does not accept, there shall remain suspended the jurisdiction of the Patent Office until the term expires for the presentation of the proof of the application having been made, or the certification of the resolution of the common tribunals shall be presented to it.

ART. 18. The certificate of registration shall be drawn up in the name of the Republic and shall contain:

1) The facsimile of the mark;

2) The name, domicile and calling of the owner;

3) The date and hour of the presentation of the application for registration;

4) The nationality of the mark;

5) The enumeration and classification of the goods for which it is intended;

6) The date of registration, its number and that of the book and folios on which it was made;

7) The term of duration of the registration; and

8) The seal of the Office and the signature of the Commissioner and of the Secretary.

The certification of registration shall bear annexed a certified copy of the application for registration; it shall be drawn up in duplicate, one copy being given to the interested party, the other copy being preserved in the archives of the Office, along with the corresponding file, for drawing up certified copies for those that apply for same. On the reverse of the certificate of registration there shall be printed Arts. 8, 9, 10, 19, 21 and 36 of this law.

ART. 19. If a mark shall already have been registered, any person that shall believe himself injured may solicit the avoidance of this registration. This action shall be brought as an ordinary case at law and shall become outlawed in five years counted from the date of the registration.

ART. 20. The right of priority as regards the ownership of a mark shall be granted according to the use that has been made thereof and otherwise according to the day and hour on which application was presented at the Office.

ART. 21. The registration of a mark shall only be valid for twenty years; this term having expired, it shall become void unless within opportune time its renewal shall have been obtained. Each renewal shall last for twenty years.

Every registration may be renewed before it becomes void and after there shall have been paid the fees prescribed by law. The corresponding receipt being presented at the Patent Office, the renewal of the mark shall be noted in the Register, and there shall be given to the interested party a certificate of renewal such as that of which Art. 18 treats, without other procedure.

ART. 22. The Patent Office shall preserve in its archives the trade marks deposited, along with the corresponding files and duplicates of the certificates of registration. With the files there shall be included the receipts for taxes or fees and petitions for registration of assignment and renewals and copies of the documents in which are evidenced the assignments.

There shall be opened books for the registration of trade marks, books for assignments of trade marks, and a book for entries of applications for registrations, and other books that may be necessary. Likewise, there shall be prepared an alphabetical index of trade mark registrations, there being followed the order of the names of the owners, and another alphabetical index following the order of the articles to which the marks refer.

Registrations shall be effected one following the other without leaving greater space between them than one line and there being followed the order corresponding to the date and hour of the decree that orders the registration. In the same order shall be enumerated cases litigated.

ART. 23. From resolutions of the Patent Office by which there is admitted or rejected an application for registration or an opposition, by which there is ordered or denied a registration or a certification, by which command is given to acknowledge personality, and, in general, from all resolutions that cause or may cause irreparable injury, appeal may be granted to the Ministry of Fomento.

The term for appeal shall be ten days.

The appeal being admitted, the parties shall be summoned to the end that they may be present by the third day to avail themselves of their rights before the superior tribunal. Whether they appear or not, the Ministry shall grant twenty days so that the parties may present their allegations and proofs and, this term having expired, it shall decide even though the parties may not have appeared or alleged. In this proceeding, notification

shall be made by means of edicts when the parties do not appear therein or shall not have indicated residence in this city for the purpose. Against the resolution of the Ministry there shall be no appeal.

CHAPTER III

Names, Insignia, Etc.

Art. 24. The name of a merchant or producer, that of a firm, that of joint stock corporations, that of the sign or designation of a house or establishment that trades in determined articles or products, that of a periodical, office or agency, shall constitute property for the effects of this law.

Art. 25. He that shall wish to exercise an industry, commerce or branch already exploited by another person, with the same name, or with the same conventional designation, shall adopt a modification that shall cause that name or that designation to be visibly distinct from that which the pre-existing house or establishment uses.

Art. 26. If the one injured by the use of a name shall make no claim within the period of one year from the day on which it began to be used publicly by another, he shall lose his right to any claim. This action shall be brought as an ordinary case at law.

Art. 27. The right to the exclusive use of a name as property shall become extinct together with the commercial house that bears it or with the exploitation of the branch for which it was intended.

Art. 28. The registration of a name is not necessary in order to exercise the rights accorded by this law.

CHAPTER IV

Falsifications

Art. 29. There is falsification of a mark of manufacture, commerce or agriculture, in the following cases:

1) When the original mark is imitated on merchandise or products comprised in the same class as it;

2) When there is sold or offered for sale merchandise that bears imitation marks;

3) When there are sold, bought or offered for sale, imitation marks;

4) When there are sold, offered for sale or bought, original marks without the consent in writing of the owner;

5) When use is made of marks that contain false indications as to the nature, quantity, quality, origin of the merchandise or products, or it be falsely assured that they have been

awarded titles, medals, diplomas or other distinctives in expositions or otherwise;

6) When, without imitating the mark, it is removed or separated from some of the articles in order to be applied to others;

7) When a person shall place his name, that of his establishment or any word or sign over an original mark;

8) When there shall be refilled with spurious products containers with the mark of another or when they shall be refilled with products that do not correspond to the legitimate as announced by the mark that the container holds; or when there shall be mixed legitimate products bearing original marks with others of foreign character or spurious; and when these products shall be stored or sold. This last is presumed if they shall be found in shops, stores or warehouses.

ART. 30. The Patent Office shall forward *ex officio* to each one of the customhouses a facsimile of each mark registered or renewed with a statement that gives:

1) The name, profession and domicile of the owner;

2) The nationality of the mark;

3) The enumeration of the articles for which it is intended;

4) The date of registration or renewal, its number and that of the book and folios in which it was made;

5) The date on which the registration expires.

On the expiry of the registration of a mark, the Office shall give notice thereof to the same customhouses.

ART. 31. When it is a question of introducing merchandise with imitation marks, the administrators of customs shall place them at the disposition of the corresponding tribunals.

ART. 32. It is presumed that an article bears an imitation mark if it is imported from a country different from that mentioned in the application, according to Art. 12.

ART. 33. Any machine or instrument intended to imitate a mark shall be confiscated.

CHAPTER V

CLASSIFICATION OF GOODS

ART. 34. For the effects of this law the goods to which the marks shall be applied shall be classified as follows:

DESCRIPTION I

Raw Materials, Unelaborated. Agricultural Products

CLASS 1. Products of agriculture and horticulture, such as starchy grains, cotton and other fibres in their raw state, flowers, seeds and plants.

CLASS 2. Construction woods in their raw state or in

boards or other pieces, planed, dovetailed, etc., firewood, charcoal, cork, barks, roots, etc.

Class 3. Liquid or solid pitch, resins, tar, gums, of every class, and rubber in its raw state.

Class 4. Animals, on the hoof and butchered.

Class 5. Hides, hair, horsehair, wool, feathers in their raw state.

Class 6. Tortoise shell, ivory, mother of pearl, coral, whalebone, horn, bones, etc., in raw or polished state.

Class 7. Minerals, earths, uncut stone, mineral carbon, coke, briquettes, etc.

Description II

Elaborated and Partly Elaborated Materials

Class 8. Materials in bulk, ingots, bars, sheets, plates, wires and residues.

Class 9. Non-edible oils, greases and essences; petroleums.

Class 10. Leather and prepared hides.

Class 11. Rubber and analogous substances in crude form, sheets, strings, pipe and tubes.

Class 12. Chemical substances and products for industry, photography, tanning, etc., not comprised in other classes.

Class 13. Explosives, powders, rockets, matches, fire lighters, fireworks, etc.

Class 14. Chemical substances and products for agriculture and horticulture; artificial and natural fertilizer, etc.

Class 15. Paints and preparations.

Class 16. Materials not comprised in other classes.

Description III

Tools, Machinery, Articles of Transport

Class 17. Tools, machines and hand implements, including cutting, not comprised in other classes; grindstones.

Class 18. Sewing machines, their parts and accessories.

Class 19. Agricultural implements, cultivating implements and their component parts.

Class 20. Steam engines and their component parts, not including locomotives and other articles comprised in other classes.

Class 21. Wrought copper, pipes, casks and receptacles of metal and wood.

Class 22. Electric machinery, its components and accessories not comprised in other classes.

Class 23. Watchmaking and chronometry.

Class 24. Shipbuilding, its parts and accessories, naval construction and its accessories, not comprised in other classes.

Class 25. Railway material, stationary and rolling, locomotives, rails, apparatus, etc.

Class 26. Coachmaking, carriage making, automobiles, velocipedes, motorcycles, vehicles, not comprised in other classes, their component parts and accessories.

Class 27. Aerostats, aeroplanes and other air vehicles, their tools and accessories.

Class 28. Saddlery, saddles, harnesses, harness gear, whips, ornaments for horses, etc.

Class 29. Cords, rope and string of hair or fibre of any sort; metallic cables.

Class 30. Firearms for war and hunting purposes and their ammunitions not comprised in class 13.

Class 31. Divers machines and apparatus not comprised in other classes.

Description IV

Construction

Class 32. Lime, gypsum, cement, asbestos, flagstones, asphalt, bricks and tiles, tarred paper and cardboard, sandpaper, glazed tile, pipes, marble, stone, slate, articles of ceramics and other materials worked or shaped for construction and architectural decoration.

Class 33. Articles of carpentry not comprised in other classes.

Class 34. Metallic pieces for construction and ornamentation.

Class 35. Hardware; iron fittings; locksmiths' work; iron goods; nails; screws; bolts; chains; and, in general, articles of metal for construction not comprised in other classes.

Class 36. Paper, cloth, cement, creams and other substances for polishing.

Class 37. Paints in general, varnishes and accessories, waxes, lacquers, glue, lacs, etc.

Class 38. Wallpaper and substitutes for wall decoration.

Class 39. Heaters, stoves, ventilating apparatus, disinfectors, etc., toilets, baths, wash basins, elevators, etc.

Description V

Furniture and Household Articles

Class 40. Cabinetmaking, furniture, frames, rods of wood, iron, or other materials, their parts and accessories.

Class 41. Mattress making, cushions, pillows, feathers, feather beds, wools, horsehair and other articles prepared for mattress making.

Class 42. Kitchen utensils of iron, steel, or other metal.

Class 43. Apparatus for baths and douches not comprised in construction.

Class 44. Filters.

Class 45. Wash stands, pitchers, soap holders, cuspidors and other utensils of domestic use of iron or other metals.

Class 46. Tapers, candles, wax matches, lamps, sulphur matches and other articles of illumination.

Class 47. Heating and cooking utensils.

Class 48. Glassware, crystal, mirrors and glass plate.

Class 49. Porcelain, Chinaware, pottery, ceramics.

Class 50. Cutlery, cutting and carving instruments.

Class 51. Carpets and matting in general, coverings therefor and for floors, door mats, shoe cleaners, etc.

Class 52. Brooms and brushes of every class, paint brushes, artist's brushes and baskets.

Class 53. Carpets, rugs, coverings for furniture.

Class 54. Curtains and accessories.

Class 55. Furnishing and household articles not comprised in other classes.

Description VI

Thread, Textiles and Clothing

Class 56. Thread of wool and other hair.

Class 57. Cloth, fabrics and textiles of wool or other hair.

Class 58. Silk thread, twisted silk and sewing silk.

Class 59. Silk piece textiles.

Class 60. Articles of silk not comprised in the preceding classes.

Class 61. Thread of linen, hemp, jute and of other fibres.

Class 62. Textiles of linen, hemp, jute, and of other fibres.

Class 63. Cotton thread.

Class 64. Cotton piece goods.

Class 65. Ready-made clothing, or partly made, of every kind.

Class 66. Linen goods, white goods, and goods for domestic use.

Class 67. Hats of every kind and millinery.

Class 68. Feathers for trimming, artificial flowers, and other trimmings for clothing.

Class 69. Embroidery, passementerie, braids, bindings, edgings and laces, girdles and ornaments, etc.

Class 70. Buttons, buttonhole-braid, lacings.

Class 71. Gloves.

Class 72. Corsets.

Class 73. Needles and pins not classified.

Class 74. Footwear of every class and accessories.

CLASS 75. Canes, umbrellas, parasols.
CLASS 76. Valises, trunks, travelling requisites, commodes and the like.
CLASS 77. Waterproof, oil, rubber cloths, etc., linoleum.
CLASS 78. Canvas and awnings.

DESCRIPTION VII

Fancy Goods

CLASS 79. Gold and silver ware.
CLASS 80. Real and imitation jewelry.
CLASS 81. Pearls and precious stones.
CLASS 82. Morocco leather.
CLASS 83. Articles of adornment of precious metals, of aluminum, nickel, Britannia metal, imitations of metal (not classified).
CLASS 84. Fans, fancy articles and articles of adornment not classified.
CLASS 85. Perfumery in general. Perfumery accessories.
CLASS 86. Toilet soaps.
CLASS 87. Combs, sponges and toilet accessories and utilities.
CLASS 88. Razors and blades for shaving, razor strops and other requisites for shaving.
CLASS 89. Manufactured tobaccos, cigars, cigarettes, cigarette papers.
CLASS 90. Pipes, cigar holders, humidors, tobacco boxes and other smokers' articles.
CLASS 91. Toys of every class, games, playing cards, etc.
CLASS 92. Sporting and gymnasium articles, hunting and fishing equipment not comprised in other classes.

DESCRIPTION VIII

Foodstuffs

CLASS 93. Meats, fish, birds, eggs and game in the fresh state.
CLASS 94. Foods, salted or preserved in other manner.
CLASS 95. Vegetables and dried or fresh fruits.
CLASS 96. Milk, lard, butter, cream, cheese and other dairy products.
CLASS 97. Edible fats, butters and oils.
CLASS 98. Vinegar, salt, condiments.
CLASS 99. Flour.
CLASS 100. Foodpastes.
CLASS 101. Bread, cake, pastry.
CLASS 102. Sugar, honey, sweets, syrups, jellies and confectionery.

Class 103. Chocolate and other cacao products not classified.

Class 104. Coffee, tea, yerba mate, chicory and other substances and products for infusion and hot drinks.

Class 105. Alcohol, spirits, divers spirituous liquors.

Class 106. Wines, sparkling wines, cider, beer, fermented drinks in general, excluding gin.

Class 107. Gaseous waters, mineral waters in general, gin and other drinks not classified.

Class 108. Food articles not classified.

Class 109. Food substances and food products for animals.

Description IX

Instruction, Science, Arts. Miscellaneous

Class 110. Books, printed matter.

Class 111. Stationery in general, cardboard.

Class 112. Office supplies and utilities: inkwells, pens, penholders, pencils, erasers, blotting papers, etc.

Class 113. Writing, copying, stamping and printing inks.

Class 114. Bookbinders' supplies.

Class 115. Fine colors for painting (not classified under 37), and painters' supplies.

Class 116. Objects of art and ornamentation: paintings, sculptures, engravings, photographs, photogravures, lithographs, etc.

Class 117. Printing type, printing presses and supplies.

Class 118. Typewriters and their parts and accessories; copying apparatus and parts and accessories.

Class 119. Optical scientific instruments.

Class 120. Photographic instruments and supplies.

Class 121. Musical instruments of every kind, sound reproducing machines, their parts and accessories, apparatus for playing musical instruments, sound reducers, etc.

Class 122. Instruments and utilities intended for instruction and education; models, maps, plans, furniture, etc.

Class 123. Surgical, medical, orthopedic, pharmaceutical, chemical and veterinary instruments and apparatus.

Class 124. Scientific instruments in general: engineering, architectural, surveying instruments; weights, measures, etc.

Class 125. Chemical and pharmaceutical products, special or not; drugs, veterinary products, disinfectants.

Class 126. Objects and apparatus not comprised in other classes used in medicine, surgery, pharmacy, veterinary, etc., in relation to the health of man and beast.

Class 127. Miscellaneous articles not classified.

CHAPTER VI

Registration Fees

Art. 35. The stamped paper that is used in the procedure of registration shall be that of twenty centavos per sheet. Certificates of registration of trade marks shall be drawn up on ordinary paper with a stamp of five colones on the first sheet and ten centavos on each sheet following. Authenticated copies of certificates of registration shall bear a stamp of two colones on the first sheet and ten centavos on each sheet following.

Art. 36. The fees for registration of a mark and those for its renewal shall be: for Salvadoreans, ten colones; for foreigners, twenty colones. The fees for the assignment of a mark by instrument between persons living shall be ten colones. In addition to the fees above established, there shall be paid for each mark and for the term that the registration lasts an annual tax of three colones for Salvadoreans and five colones for foreigners; the payment having to be made covering a full period of five annuities in advance and the corresponding receipt having to be presented at the Patent Office within the first month of the corresponding period, and, if it be not presented, the registration shall be declared forfeited and the Office shall *ex officio* cancel the registration.

Art. 37. The notice of which Art. 15 of this law speaks shall not cost the interested party more than six colones.

Art. 38. All laws that burden the registration of marks, directly or indirectly, with stamp fees or stamped paper fees are revoked.

CHAPTER VII

Art. 39. The Trade Mark Law of May 11, 1910, and its amendments and additions of June 19, 1913, and July 12, 1916, are revoked.

Art. 40. As regards the payment of annual taxes, the laws in force on the date of the application for registry shall hold, but with respect to marks renewed after this law has entered into force they shall be governed by it, the same as with regard to stamped paper and stamps.

SIAM

LAW OF THE YEAR 2457 (1914). EFFECTIVE OCT. 1, 1914*

1. This Law shall be cited as the "Law on Trade-Marks and Trade-Names of the Year 2457."

2. It shall come into force on the 1st day of October, 2457.*

CHAPTER I

Trade Marks

3. A trade-mark is a mark that is applied or attached to goods or to their coverings, packings or wrappers so as to distinguish them as being produced, manufactured, worked upon, imported, selected, certified, and dealt in or sold by a particular person.

4. A trade-mark must consist of or contain one or more of the following particulars:

1) A name of an individual, firm or company, printed, impressed, woven or marked in some particular and distinctive manner; or

2) A reproduction of a signature of the individual, firm or company applying for registration thereof as a trade-mark, or of some predecessor in his business; or

3) A distinctive device, emblem, seal, design, pattern, brand, label or ticket; or

4) A distinctive combination of letters or figures; or

5) An invented word or invented words; or

6) A word or words having no reference to the nature or quality of the goods, and not being a geographical name.

5. The following may not be used as a trade-mark or part of a trade-mark:

1) The Siamese arms;

2) The Royal name, and Royal monograms;

3) The effigies of any of the Kings, Queens, Princes, Princesses of the reigning dynasty;

4) The emblems and insignia of the Royal Orders and Siamese Decorations;

5) The emblem of the Red Cross and the Denominations "Red Cross" or "Geneva Cross";

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*Operation delayed and law not yet in effect, although applications for registration are accepted for filing.

6) Any mark that is contrary to public policy or to good morals;

7) A device identical with or similar to a medal, diploma or certificate awarded at an Exhibition held by the Siamese Government or by a Foreign Government or Municipal Corporation, unless such medal, diploma or certificate has been actually awarded for the goods bearing it.

6. The owner of a trade-mark is entitled to the exclusive use thereof, for that description of goods for which it is used.

7. The owner of a trade-mark is entitled to the exclusive use of the words mentioned in Section 4, Nos. 5 and 6, no matter how they are printed, impressed, woven, or marked.

8. If after the coming into force of this Law a trade-mark has been publicly, extensively and simultaneously used in Siam on goods of the same description for more than two years and by more than three owners without any objection being lodged in Court, such trade-mark shall be deemed to be common in the trade in that description of goods and may be used by any person in Siam.

9. The right to a trade-mark may be transferred only with the business in that description of goods to which it refers, or by dividing it according to the nature of the goods for which it is used.

CHAPTER II

Trade-Names

10. Any person engaged in trade may use as trade-name his own name or an invented name. He may use the name of another person with the consent of the person entitled to it.

11. No person may use as a trade-name the Royal name or a name including the word Royal without a warrant from His Majesty.

12. A person who trades under a lawful trade-name is entitled to the exclusive use of it. If a person bearing an identical name intends to trade under it in the same or similar goods he must add to it some other name or qualification, in such a way as to prevent his trade-name from being confused with the trade-name of the former person.

CHAPTER III

Registration of Trade-Marks

13. Every trade-mark complying with the conditions of Sections 4 and 5 may be registered, provided that its owner be a person under Siamese jurisdiction or a subject of a Government which has accepted the present Law.

14. The Offices for the registration of trade-marks shall be at the Ministry of Agriculture.

15. The application for the registration of a trade-mark shall be made in writing and signed by the applicant, and must be directed to the Registrar for Trade-Marks.

16. If the applicant is not the owner of the trade-mark, he must attach to the application a written authority showing that he has the power to apply for registration.

17. No application shall be entertained unless the applicant had a fixed place of business in Siam.

18. The application for the registration of trade-mark must be dated and must contain the following particulars:

1) The name, nationality, residence and occupation of the applicant;

2) The name, nationality, residence and occupation of the owner of the trade-mark, if he be not the applicant;

3) The class of goods to which the trade-mark applies, according to the classification in Schedule A;

4) A description of the trade-mark showing its true dimensions.

19. If a trade-mark is intended to be used for goods of different classes, there shall be made an application for each class of goods.

20. Trade-marks which while resembling each other in the material particulars thereof, yet differ in respect of:

1) The statement of the goods for which they are respectively used or proposed to be used, or

2) Statements of numbers, or

3) Statements of price, or

4) Statements of quality, or

5) Statements of names of places, or

6) Colour,

may be registered as a series in one registration, provided that they refer to goods of the same class.

21. A trade-mark may be registered with blank spaces to be filled up when the mark is affixed to the goods.

22. To the application shall be attached three identical representations of the trade-mark, on separate sheets of tough paper.

These representations must be printed, engraved or drawn so as to be of a durable nature and to clearly show the mark. They must be signed by the applicant.

23. The dimensions of the sheet of paper must be 20 by 25 centimeters. The trade-mark must be printed, engraved or

drawn in the middle, so as to allow on the sides the place for the particulars mentioned in Section 27.

24. Whenever possible, the trade-mark must be represented in its actual size.

Small trade-marks may be represented on an enlarged scale.

Trade-marks which are of a larger size than the space allowed on the sheet of paper may be represented on a reduced scale, or they may be mounted upon linen, tracing cloth or such other material as the Registrar may consider suitable; part of the mounting shall be affixed in the space aforesaid and the rest shall be folded over.

25. A signed and dated receipt of the application, in the form provided for by Schedule B attached to this Law, shall be delivered by the Registrar to the applicant.

26. On being satisfied:

1) That the trade-mark does not contain any of the particulars forbidden by Section 5, and

2) That it is not identical with one already registered to another owner with respect of goods of the same class, or so nearly resembling such a trade-mark as to deceive a purchaser, and

3) That the other conditions required by law are complied with,

The Registrar shall enter the application in his register in the form provided for by Schedule C attached to this law.

27. The Registrar shall at the same time enter on each of the three representations of the trade-mark the following particulars:

1) The serial number of the registration;

2) The date on which the application was received at the Office of the Registrar;

3) The name, nationality and address of the owner of the trade-mark;

4) The class of goods to which the trade-mark applies.

He shall date and sign every such statement and shall affix to it the seal of his Office.

28. The date of the receipt of the application is the date of the registration.

29. Two of the representations shall be kept by the Registrar. The third representation shall be returned to the applicant.

30. If in the opinion of the Registrar a trade-mark contains any of the particulars forbidden by Section 5 or is identical with one already registered to another owner with respect

of goods of the same class, or is so nearly resembling such a trade-mark as to deceive a purchaser, or if in the opinion of the Registrar the other conditions required by law are not complied with, the Registrar shall refuse to proceed with the registration and shall send to the applicant a written notice thereof, stating in it his reasons for not entering the application.

31. The entry of refusal of application must be made within one month from the day of receipt of application.

32. The applicants may, within three months after the receipt of the notice provided by Section 30, submit to the Registrar a counter-statement of the grounds on which he relies for his application. If he does not do so, he shall be deemed to have abandoned his application.

33. If within one month from receipt of the counter-statement the Registrar has not entered the application, the applicant may refer the case to the Court, which shall have power to give such order as it may think in accordance with the law.

34. If before an application has been granted another application in connection with the same class of goods is made for the same trade-mark or for a trade-mark so nearly resembling it as to deceive a purchaser, the Registrar shall notify both applicants thereof and direct them to settle the case between themselves or to submit it to the Court.

35. If within three months from the date of the notice provided for in Section 34 the Registrar has not been notified that an agreement has been arrived at or that a case has been entered in Court, the Registrar shall proceed with the registration of the trade-mark for which application has first been made.

If the parties have come to an agreement, the registration shall be made in accordance with it.

CHAPTER IV

Effects of Registration on Trade-Marks

36. The registration of a trade-mark is valid for twelve years and may be renewed.

37. A person who is registered as owner of a trade-mark is considered to be its owner and to have the exclusive right to use it for all the goods of the class or classes for which registration has been granted until the registration has been cancelled, amended or restricted under Chapter 6.

38. Although a trade-mark has been registered in one colour, its owner has the exclusive right to use it in any other colour.

39. Every person who is registered as the owner of a trade-mark must keep in Siam a fixed place of business or keep in Siam an agent having a fixed place of business.

CHAPTER V

Changes in Registration of Trade-Marks and Transfers of Trade-Marks

40. Every change in the address or in the name of the owner of a registered trade-mark or in the address of the agent of the owner of a registered trade-mark shall be registered.

41. No transfer of the right to a registered trade-mark shall be valid as regards third persons unless registered.

42. An application for a change or transfer must be made in writing and must be accompanied by the representation of the trade-mark which was originally delivered to the applicant under Section 29.

43. The change or transfer must be entered in the register in the form provided for in Schedule D, and must be entered also on the three original representations of the trade-mark.

CHAPTER VI

Cancellation or Amendment of Registration

44. The registration of a trade-mark shall be cancelled by the Registrar at the expiration of the period of protection provided for by Section 36.

45. The registration of a trade-mark may be cancelled by the Registrar if the owner of that trade-mark has discontinued for more than two years to keep in Siam a fixed place of business or an agent having a fixed place of business.

46. Before proceeding with the cancellation of a registration of a trade-mark under Section 44 or 45, the Registrar must give notice thereof to the owner or agent at his last registered address and allow him not less than six months to make a counter-statement as he may think fit.

47. A person who feels aggrieved at a decision of the Registrar cancelling a registration may apply to the Court to have it amended or reversed.

48. The registration of a trade-mark may be cancelled by an order of the Court on the application of any person who may show:

1) That he has a better title to it than the person registered as the owner; or

2) That the trade-mark has become common in trade as provided for by Section 8; or

3) That the person registered as the owner of the mark has discontinued for more than two years to keep in Siam a fixed place of business or an agent having a fixed place of business.

If the applicant shows better title only for some of the goods of the class for which registration has been granted, the Court shall restrict the registration to the goods for which better title has not been shown.

49. The Registrar shall on production of the certified copy of any final order or judgment of a Court granting an application, or cancelling a registration, or reversing a cancellation, or altering an entry, make a necessary entry or cancellation or alteration in the Register and in the representations of the trade-mark concerned.

50. In all proceedings before the Court the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

CHAPTER VII

Examination of Register—Copies

51. Any person shall be entitled to consult the Register of entries of trade-marks, and the collection of representations of trade-marks kept by the Registrar and to obtain copies thereof.

52. The Registrar shall on application made by any person being the party to a case in which a trade-mark is concerned send to the Court one of the representations of such trade-mark which are kept in his office.

The Court shall return the representation to the Registrar as soon as the case has become final.

CHAPTER VIII

Jurisdiction

53. The "Court" mentioned in Sections 33, 34, 35, 47, 48, 49, and 50 of this law means:

When the defendant in the case is a person under Siamese jurisdiction, the Siamese Court or the International Court or the Court of Foreign Causes, according to the present rules of competence;

In any other case, the Court of Foreign Causes.

CHAPTER IX

Offences

54. Whoever represents as being registered in Siam a trade-mark which is not so registered and whoever knowingly

sells or offers for sale articles bearing such a false representation, shall be punished with fine not exceeding one thousand ticals. The articles bearing such false representation shall be forfeited irrespective of the conviction or non-conviction of any particular person.

55. The provisions of Sections 235, 238 and 239 of the Penal Code apply to the unlawful use of any trade-name and to any goods bearing a trade-name unlawfully used.

56. The penalties for:

counterfeiting any trade-mark, or fraudulently imitating a trade-mark in a manner calculated to deceive a purchaser; or importing, selling or exposing for sale goods bearing a counterfeit trade-mark or an imitation trade-mark, are provided by Sections 236 to 239 of the Penal Code. These Sections apply whether the trade-mark be registered or not.

CHAPTER X

Execution

57. The Minister of Agriculture shall have charge and control of the execution of the present law. It shall be lawful for him to frame regulation for such execution and to fix the scale of fees for any registration, delivery of copies, examination of Registers or other acts to be done under or by virtue of this Law.

SIERRA LEONE

ORDINANCE [NO. 17] OF SEPTEMBER 23, 1913

Short title

1. This Ordinance may be cited as the Trade Mark Ordinance, 1913.

DEFINITIONS

Interpretation

2. For the purpose of this Ordinance, unless the context otherwise requires:

A "Mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

A "Trade Mark" means a mark used or proposed to be used, upon or in connection with goods, for the purposes of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

A "Registrable Trade Mark" means a trade mark which is capable of registration under the provisions of this Ordinance.

A "Registered Trade Mark" means a trade mark which is actually on the register.

"Prescribed" means, in relation to proceedings before the Court, prescribed by rules of Court; and, in other cases, prescribed by this Ordinance or any rules made thereunder.

"Registrar" means the Master and Registrar of the Court, the Deputy Master, or such other person as the Governor may appoint to be Registrar of Trade Marks.

"Court" means the Supreme Court of the Colony in its original jurisdiction.

"Goods" means anything which is the subject of trade, manufacture, or merchandise.

"Colony" includes Protectorate.

REGISTER OF TRADE MARKS

3. There shall be kept at the Registrar's Office a book called the register of trade marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, the dates on which applications were made for their registration, as hereinafter provided, notification of assignments, and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

No trust to be entered on register

4. There shall not be entered in the register kept under this Ordinance any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of register and granting of certified copies

5. The register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to the provisions of this Ordinance and to such rules as may be prescribed; and certified copies of any entry in any such register shall be given to any persons requiring the same, on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Trade marks. What marks are registrable as such

6. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

(1) The name of a company, individual or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such use has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Provided always that any mark which has been registered as a distinctive mark in England under the Trade Marks Act, 1915, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Connection of trade mark with goods

7. A trade mark must be registered for particular goods or classes of goods. The applicant shall in his application state goods included in one class only. If the applicant desires to

register the same mark for goods falling in more than one class, he shall make a separate application in respect of each class, and each of such applications shall be treated for all purposes as a separate and distinct application and the entries on the register in pursuance of such application shall for all purposes be deemed to relate to separate and distinct trade marks.

Coloured trade marks

8. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Further restriction on registration

9. (1) It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being calculated to deceive or otherwise, be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered for any goods set forth and included in classes 23, 24, and 25* of the Third Part of the Schedule hereto, unless such trade mark has been and is registered in the Union Kingdom in respect of such goods.

REGISTRATION OF TRADE MARKS

Application for registration

10. (1) Any person claiming to be the proprietor of a trade mark may by himself or his agent apply to the Registrar for the registration thereof.

(2) The application must be made in the prescribed form, and must be accompanied by not less than three representations of the trade mark and by a stereotype block of such representation.

(3) The applicant must state the particular goods or classes of goods in connection with which he desires his trade mark to be registered.

(4) The application must be left with or sent by post to the Registrar.

(5) The date of the delivery or receipt of the application shall be endorsed thereon and recorded in the Registrar's Office.

(6) When an applicant for the registration of a trade mark is out of the Colony at the time of making the application he

* *Class* 23. (a) Cotton yarn; (b) sewing cotton.
Class 24. Cotton piece goods of all kinds.
Class 25. Cotton goods not included in other classes.

shall give the Registrar an address for service in the Colony, and if he fails to do so the Registrar may refuse to proceed with the application until the address has been given.

Action in regard to application

11. (1) Subject to the provisions of this Ordinance the Registrar may refuse such application as aforesaid, or may accept it absolutely or subject to conditions, amendments, or modifications.

(2) In case of any such refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(3) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

Disclaimer

12. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Advertisement of application

13. Every application for registration of a trade mark under this Ordinance and a representation of such mark shall, as soon as may be after its receipt, be advertised by the Registrar in the *Gazette* unless the Registrar refuses to entertain the application.

Opposition to registration

14. (1) Any person may, within three months, or such further time, not exceeding nine months in all, as the Registrar may allow, from the date of the advertisement of the applica-

tion, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing and in duplicate, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and, within one month after the receipt of such notice, or such further time not exceeding three months in all, as the Registrar may allow, the applicant shall send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant send such counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition, and if such security is not given within fourteen days after such requirement was made or such further time as the Registrar may allow, the opposition shall be deemed to be withdrawn.

(5) If the person who gave notice of opposition duly gives such security as aforesaid, the Registrar shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the Court.

(6) Where the opponent is out of the Colony, he shall, with the notice of opposition to registration, give the Registrar an address for service in the Colony.

Case—how brought before the Court

15. (1) When a case stands for the determination of the Court under the provisions of the last preceding section, the Registrar shall require the applicant to make a written application to the Court for an order that, notwithstanding the opposition of which notice has been given, the registration of trade mark be proceeded with by the Registrar, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court.

(2) The applicant shall thereupon make his application or take such other proceedings as aforesaid, within the period of one month above named or such further time as the Registrar may allow, and shall also within the like period give notice thereof to the Registrar.

(3) If the applicant shall fail to make such application or to take such other proceedings, of which failure the non-receipt by the Registrar of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Costs

16. The Court shall have power in proceedings under the last two preceding sections of this Ordinance to award to any party such costs as it may consider reasonable, and to direct how and by what parties they are to be paid.

Date of registration

17. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date be deemed for the purposes of this Ordinance to be the date of registration.

Certificate of registration

18. The Registrar shall have a seal, and on the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Advertisement of application

19. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the *Gazette*. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Limit of time for proceeding with application

20. Where the registration of a trade mark is not completed within twelve months from the date of the application, by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant or to his agent (if any), treat the application as abandoned unless it is completed before the expiration of fourteen days from such notice or of such further time as the Registrar may in special cases permit.

IDENTICAL TRADE MARKS

Identical marks

21. Except by order of the Court, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

22. Where each of several persons claims to be proprietor of the same trade marks or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court or have been settled by agreement in a manner approved by him.

Concurrent user

23. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

ASSIGNMENT

Assignment and transmission of trade mark

24. A trade mark when registered shall be assigned and transmitted only in connection with the good-will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that good-will.

Apportionment of marks on dissolution of partnerships

25. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the good-will of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

26. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks

27. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade marks separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

28. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(1) Statements of the goods for which they are respectively used or proposed to be used; or

(2) Statements of number, price, quality, or names of places; or

(3) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(4) Colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks

29. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks: Provided that, where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

DURATION AND RENEWAL OF REGISTRATION

Duration of registration

30. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of registration

31. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years, from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration

32. At the prescribed time, before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if, at the expiration of the time prescribed in that behalf, such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark

33. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF APPLICATIONS, OR OF THE REGISTER

Registrar may correct formal errors in applications

34. The Registrar may, on request in writing, accompanied by the prescribed fee,

(1) Correct any clerical error in or in connection with an application for the registration of a trade mark; or

(2) Permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered.

Correction of register

35. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,—

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Entry in register of assignments

36. Subject to the provisions of this Ordinance, where a person becomes entitled by assignment, transmission, or other operation of law, to a registered trade mark, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered as proprietor of the trade mark on the register of trade marks: Provided that any decision of the Registrar under this section shall be subject to appeal to the Court.

Application to alter registered trade mark

37. (1) The registered proprietor of any registered trade mark may apply to the Registrar for leave to add to or alter such mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse or grant leave on such terms as he may think fit, but any refusal or conditional permission shall be subject to appeal to the Court.

Prescribed manner

(2) If leave be granted, the mark as altered shall be advertised in the prescribed manner; and the Registrar shall, on payment of the prescribed fee, cause the register to be altered in conformity with the order.

Rectification of the register by the Court

38. (1) The Court may, on the application of any person aggrieved by the omission without sufficient cause of the name of any person or of any other particulars from the register kept under this Ordinance, or by any entry made without sufficient cause in any such register, or by any entry wrongfully remaining on the register, make such order for making, expunging, or varying the entry as the Court thinks fit, or the Court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(4) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section.

(5) If any order of the Court rectifying the register is made, the Registrar shall on proof thereof and on payment of the prescribed fee cause the register to be altered in conformity with such order.

Non-user of trade mark

39. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon such trade mark in respect of the goods.

EFFECT OF REGISTRATION

Powers of registered proprietor

40. Subject to the provisions of this Ordinance—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark

41. Subject to the provisions of section 43 of this Ordinance and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade

mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that, where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except so far as their respective rights have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be prima facie evidence of validity

42. In all legal proceedings relating to a registered trade mark (including applications under section 38 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years

43. In all legal proceedings relating to a registered trade mark (including applications under section 38 of this Ordinance), the original registration of such trade mark shall, after the expiration of seven years from the date of such original registration (or seven years from the commencement of this Ordinance, whichever shall last happen), be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 9 of this Ordinance: Provided that nothing in this Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section 23 of this Ordinance.

No protection for unregistered trade marks

44. No person shall be entitled to institute any proceedings to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been in use for not less than three years prior to the commencement of such proceedings, and has been refused registration under

PATENT DEPARTMENT
FISK RUBBER CO.
CUDAHY, [illegible]

this Ordinance. The Registrar may, on request, grant a certificate that such registration has been refused.

Action for infringement

45. In an action for the infringement of a trade mark, the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

No interference with bona fide user of name or description of goods

46. No registration under this Ordinance shall interfere with any bona fide use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any bona fide description of the character or quality of his goods.

Action for passing off goods

47. Nothing in this Ordinance shall be deemed to affect the rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificates of validity

48. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then, in any subsequent legal proceeding in which such validity comes into question, the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Procedure before the Court

49. Every application made to the Court under sections 37 and 38 and all proceedings thereunder shall be conducted in such manner as the Court may direct.

Costs

50. In all proceedings before the Court under this Ordinance, the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

EVIDENCE

Certified copies to be admitted as evidence

51. Printed or written copies or extracts, purporting to be

certified by the Registrar, of or from any document, register and other books filed or kept under this Ordinance in his office, shall be admitted in evidence in all Courts in this Colony, and in all proceedings, without further proof or production of the originals.

Certificate of registration to be prima facie evidence

52. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Ordinance, or rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications may be sent by post

53. (1) Any application, notice, or other document authorized or required to be left with, made, or given to the Registrar or to any other person under this Ordinance, may be sent by a registered letter through the post, and if so sent shall be deemed to have been so left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and registered at the Post Office.

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS

Exercise of discretionary power by Registrar

54. Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

POWER TO MAKE RULES AS TO FEES, ETC.

Power to make rules

55. (1) Subject to the provisions of this Ordinance, and subject to disallowance by His Majesty, the Governor in Council may from time to time make such rules, prescribe such forms and generally do such things as he thinks expedient—

(a) For regulating the practice of registration under this Ordinance;

(b) For classifying goods for the purposes of registration of trade marks;

(c) For prescribing the fees payable in respect of applications and registrations and other matters under this Ordi-

nance, and the mode of payment of the same;

(d) Generally, for regulating all things by this Ordinance placed under the direction or control of the Registrar;

(e) For altering or revoking the provisions contained in the schedules hereto.

(2) Unless and until they be altered or revoked under this section, the provisions contained in the schedule hereto shall be in force.

Special Trade Marks

Standardization of trade marks

56. Where any person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Registrar may, if he shall judge it to be to the public advantage, permit such person to register such mark as a trade mark in respect of such goods, whether or not such person be a trader or possessed of a goodwill in connection with such examination and certifying. When so registered, such trade mark shall be deemed in all respects to be a registered trade mark, and such person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Registrar.

Trade Marks Registered in Great Britain

Registration of British trade marks

57. (1) Any person who has registered a trade mark in the United Kingdom shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall have the same date as the application for registration in the United Kingdom: Provided that his application is made within four months from his applying for protection in the United Kingdom; Provided further that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

(2) The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration of the trade mark.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance: Provided that any trade mark, the registration of which has been duly obtained in the United Kingdom, may be registered under this Ordinance.

Powers of Customs authorities to detain goods in certain cases

58. Any person who has duly registered his trade mark in respect of any goods in the United Kingdom may, by himself, his agents or representative in the Colony, on giving notice in writing to the Comptroller of Customs that goods bearing a mark so nearly resembling his trade mark as to be well calculated to deceive are being imported into the Colony, cause the said goods to be detained by such Comptroller of Customs until the rights of the matter have been determined according to law: Provided that any such informant shall reimburse to the Comptroller of Customs all expenses and damages incurred in respect of such detention made on his information, and of any proceedings consequent on such detention.

OFFENCES

59. If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable, on conviction, to imprisonment, with or without hard labour, for a term not exceeding seven years.

60. (1) Any person who represents a trade mark as registered which is not so, shall be liable, on summary conviction, to a penalty not exceeding five pounds.

(2) A person shall be deemed for the purposes of this section, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

61. If any person, without the authority of His Majesty, uses in connection with any trade, business, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, he shall be liable, on summary conviction, to a penalty not exceeding twenty pounds: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

COSTS

Jurisdiction and practice. No. 14 of 1904

62. So far as the same may be applicable the provisions of the Supreme Court Ordinance, 1904, and the practice and

procedure thereunder shall extend and apply to all proceedings under this Ordinance.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS

International arrangements—Priority registration

63. (1) If His Majesty is pleased by Order in Council to apply the provisions of section 91 of the Patents and Designs Act, 1907,* to the Colony, then any person who has applied for protection for any trade mark in any foreign State with the Government of which His Majesty has made an arrangement under the said section for mutual protection of trade marks, shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants, and such registration shall take effect from the same date as the date of the application in such foreign State.

(2) Every application for the registration of a trade mark under this section shall be made within four months from the date of the application for protection in such foreign State.

(3) Nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

(4) The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration thereof.

(5) The application for the registration of a trade mark under this section shall be made in the same manner as an ordinary application under this Ordinance: Provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(6) The provisions of this section shall apply only in the case of those foreign States with respect to which His Majesty shall from time to time by Order in Council declare the provision of the aforesaid section 91 of the Patents and Designs Act, 1907, to be applicable, and so long only in the case of each State as such Order continues in force with respect to that State.

Intercolonial arrangements

64. (1) Whenever it appears to the Governor in Council that the legislature of any British Possession has made satisfactory provision for the protection in such Possession of trade marks registered in the Colony, the Governor in Council may by Order apply all or any of the provisions of the last preceding section of this Ordinance, with such variations or additions as

*See Great Britain: Patents and Designs Act, 1907.

may seem fit, to trade marks registered in such British Possession.

(2) An Order in Council under this section shall, from a date to be mentioned in the Order, take effect as if its provisions had been contained in this Ordinance.

GENERAL

Provisions as to public holidays

65. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document with, or paying any fee to the Registrar, shall fall on a Sunday or public holiday, it shall be lawful to leave such document or to pay such fee on the day next following such Sunday or public holiday or holidays, if two or more of them occur consecutively.

Infants, lunatics, etc.

66. If any person is, by reason of infancy, lunacy or other inability, incapable of making any affidavit or doing anything required or permitted by this Ordinance or by any rules made under the authority of this Ordinance, then the guardian of such incapable person, or if there be none, any person appointed by any Court possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person or any other person interested in the making of such affidavit or doing such thing, may make such affidavit, or an affidavit as nearly corresponding thereto as circumstances may permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall, for the purposes of this Ordinance, be as effectual as if done by the person for which he is substituted.

Definition of "trade mark." No. 7 of 1889

67. The definition of trade mark in the Merchandise Marks Ordinance, 1889* is hereby repealed, and the expression "trade mark" in that Ordinance shall have the same meaning as in this Ordinance.

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*Substantially the same as Merchandise Mark Act, 1887, of Great Britain, which see.

SOUTH AFRICAN UNION

LAW OF APRIL 15, 1916, EFFECTIVE JANUARY 1, 1917*

CHAPTER III

TRADE MARKS

Interpretation of Terms Used in this Chapter

96. For the purposes of this Chapter—

"mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

"Provincial Trade Marks Act" shall mean a law in force in any Province on the 31st day of May, 1910, relating to the registration of trade marks, and shall include all regulations in force under such law;

"register" shall mean the register of trade marks kept under this Chapter;

"registered trade mark" shall mean a trade mark registered under this Chapter;

"trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of that trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale.

Part I—Transitional Provisions

Transfer of Administration of Provincial Trade Marks Acts

97. The Governor-General may, by proclamation in the *Gazette,* declare that on a date therein specified the administration of the Trade Marks Acts of any Province shall be transferred to the trade marks office established under this Act.

Effect of Such Transfer

98. On and after the date so specified—

(1) The Trade Marks Acts of any such Province shall, save as is otherwise expressly provided, cease to apply;

(2) proceedings under a Provincial Trade Marks Act pending at the commencement of this Chapter may be continued and completed under the Provincial Trade Marks Act which shall, so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights and obligations, be administered by the registrar, who shall collect any fees payable thereunder;

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*For extension and full title see Sec. 194 (note) and Sec. 195.

(3) all powers and functions under any Provincial Trade Marks Act vested in the Governor or in any Minister, officer or authority of any such Province as aforesaid shall vest in the Governor-General, Minister, officer or authority exercising similar powers under the Union as the case requires or as is prescribed;

(4) all the registers of trade marks existing under any Provincial Trade Marks Act shall be deemed to be incorporated with and to form part of the register established under this Chapter;

(5) subject to the provisions of sections one hundred and twenty-three, one hundred and twenty-eight and one hundred and thirty-five of this Act, the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Chapter.

Part II—Registrable Trade Marks

Essential Particulars of Registrable Trade Marks

99. A registrable trade mark must contain or consist of at least one of the following essential particulars:—

a) The name of a company, individual or firm represented in a special or particular manner; or

b) the signature of the applicant for registration or of some predecessor in his business; or

c) an invented word or invented words; or

d) a distinctive word or words not reasonably required for use in the trade; or

e) any other distinctive mark;

but a name or signature other than such as fall within the description in paragraphs (a) and (b) of this section shall not, except by order of the Minister or the court, be deemed a distinctive mark:

Provided that any mark used as a trade mark in any Province by the applicant or his predecessor in business for ten years prior to the commencement of this Chapter and which has continued to be so used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration may be registered as a trade mark for any such Province.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons. In determining whether a

trade mark is so adapted regard may be had in respect to a trade mark in actual use to the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

What a Registrable Trade Mark May Not Contain

100. Except in the case of a trade mark properly registered under a Provincial Trade Marks Act, the registrar may refuse to register a trade mark which contains—

a) a representation of the King, the Queen, or any member of the Royal Family, or of the Royal Crown; or

b) the word "Royal" or any word, letter or device indicating Royal or Government patronage; or

c) a representation of the Royal Arms, or of a national flag of the United Kingdom, or of the national arms of the United Kingdom, or of the arms or seal of the Union; or

d) a representation of any living person without his written consent.

Limitation of Trade Mark as to Particular Colours

101. A trade mark may be limited in whole or in part to a particular colour or colours, and in case of any application for the registration of a trade mark, the fact that the trade mark is so limited shall be taken into consideration by any tribunal in deciding whether it is distinctive or not. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Registration of Mark in Favour of Authorities Undertaking Examination of Goods

102. (1) Where any Union or Provincial authority, or any association or person undertakes the examination of any goods in respect of origin, material, mode or conditions of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by a mark used upon or in connection with such goods, the Minister may, if he judges it to be to the public advantage, permit the authority, association or person to register the mark as a trade mark in respect of such goods, whether the authority, association or person is or is not a trader, or is or is not possessed of a goodwill in connection with such examination and certifying.

(2) When registered, the trade mark shall be deemed in all respects to be a registered trade mark, and the authority, association or person to be the registered proprietor thereof, save that the trade mark shall not be transmissible or assignable except with the permission of the Minister.

(3) This section shall as to conditions of manufacture ap-

ply to Union and Provincial authorities only.

PART III—REGISTRATION OF TRADE MARKS

Trade Marks Must be Registered in Respect of Particular Goods or Classes of Goods

103. A trade mark must be registered in respect of particular goods or classes of goods as prescribed.

Grounds for Requiring Disclaimer as to Particular Parts or Matter as a Condition of Registration

104. If a trade mark—

a) contains parts not separately registered by the proprietor as trade marks; or

b) contains matter common to the trade or otherwise of a non-distinctive character,

the registrar or the court, as the case may be, in deciding whether the trade mark shall be entered or shall remain upon the register, may in his or its discretion require, as a condition of its being on the register that the proprietor shall disclaim any right to the exclusive use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration: Provided that no such disclaimer shall affect any rights of the proprietor of the trade mark except such as depend upon its registration.

Trade Marks Identical with Registered Trade Marks of Another Not to be Registered

105. Except by order of the court, or, in the case of a trade mark falling within the proviso to section ninety-nine, no trade mark shall, save as is provided by section one hundred and eleven, be registered in respect of any goods or description of goods if such trade mark is identical with one belonging to a different proprietor and already registered in respect of such goods or description of goods, or if such trade mark so nearly resembles the other trade mark as to be calculated to deceive.

Refusal Where Several Applicants for Registration of Identical Trade Mark

106. Where each of several persons applies to be registered as the proprietor of the same trade mark or of nearly identical trade marks in respect of the same goods or description of goods, the registrar may refuse to register the trade mark until the rights of the applicants have been determined by the court, or have been settled by agreement in a manner approved by him.

Circumstances Under Which Registration of Identical Trade Marks May Take Place

107. In case of honest concurrent user or of special circumstances the court may, in its discretion, permit the registration of the same trade mark or of nearly identical trade marks for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations (if any) as to mode or place of user or otherwise as it may think fit to impose.

Registration of Associated Trade Marks

108. (1) Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the register as to be calculated to deceive or cause confusion if used by a person other than the applicant, the registrar may require as a condition of registration that the trade marks shall be entered on the register as associated trade marks.

(2) If the proprietor of a trade mark claims to be entitled to the exclusive use of any part of it separately he may, if the part satisfies all the conditions of a trade mark, register it as a separate trade mark.

(3) When a part of a registered trade mark is registered separately, it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the register as such, and the user of the whole trade mark shall for the purposes of this Chapter be deemed to be also a user of the part separately registered as a trade mark.

(4) Associated trade marks shall be assignable or transmissible only as a whole and not separately; but they shall for all other purposes be deemed to have been registered as separate trade marks.

Acceptance of User of Associated Trade Marks as Equivalent for User of Registered Trade Mark

109. Where under the provisions of this Chapter user of a registered trade mark is required to be proved for any purpose, the registrar, or the court, as the case may be, may, if and so far as he or it thinks fit, accept user of an associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the user of the first-mentioned trade mark.

Form of Application for Registration of Trade Mark

110. (1) Any person claiming to be the proprietor of a trade mark may make application to the registrar for the registration of his trade mark.

(2) The application must be made in the form prescribed, and be accompanied by the prescribed number of representations of the trade mark, and must—

a) specify the goods or class of goods in respect of which the applicant desires the trade mark to be registered; and

b) state an address within the Union as an address for service.

(3) Separate applications must be made for the registration of a trade mark in respect of each class of goods in respect of which the applicant desires it to be registered.

Procedure on Application for Registration of Trade Mark

111. (1) Every application must be lodged by being left at or sent by post to the trade marks office.

(2) Where the same trade mark, or a nearly identical trade mark, is owned or registered by another proprietor in any Province of the Union in respect of the same goods, or description of goods, the trade mark may be registered, but any such Province may be excepted from the registration.

(3) Where the trade mark, or a nearly identical trade mark, is common to the trade in another Province, the registration under this Chapter shall confer no exclusive rights in that Province on the registered proprietor, and that Province may be excepted from the registration under this Chapter.

(4) Subject to the provisions of this Chapter, the registrar may either accept the application, with or without modification or conditions, or refuse it.

Appeal to Court Against Refusal or Conditional Acceptance by Registrar of Application

112. (1) In case of any such refusal or conditional acceptance, the registrar shall, if required by the applicant, state in writing the grounds of his decision, and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the court.

(2) The court shall hear the applicant, and, if required, also the registrar, and shall make an order determining whether, and subject to what conditions, amendments or modifications, if any, the application is to be accepted.

(3) Appeals under this section shall be heard on the materials so stated by the registrar to have been used by him in arriving at his decision; and no further grounds of objection to the acceptance of the application shall be taken by the registrar, other than those stated by him, except by leave of the court. When any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(4) The registrar or the court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of Accepted Applications

113. If the application is accepted with or without conditions or modifications, it shall forthwith be advertised in the prescribed manner.

Non-Completed Applications

114. If, by reason of default on the part of the applicant, the registration of a trade mark has not been completed within twelve months from the date of lodging of the application, the registrar shall give notice of the non-completion to the applicant, and if, at the expiration of fourteen days from that notice or of such further time as the registrar may allow, the registration is not completed, the application shall be deemed to be abandoned.

Notice of Opposition to Registration

115. (1) Any person (hereinafter referred to as an objector) may, within two months after the date of the last advertisement of the application or within such further time as the registrar may allow, lodge at the trade marks office a notice of opposition in duplicate to the registration of the trade mark, setting out the grounds on which he relies to support his notice.

(2) The registrar shall send a duplicate of the notice of opposition to the applicant.

(3) Every notice of opposition shall state an address in the Union as an address for service.

Lodging of Counter-Statement by Applicant

116. (1) Within one month after the lodging of notice of opposition or within such further time not exceeding three months, as the registrar (on application made within such first mentioned one month) allows, the applicant may lodge at the trade marks office a counter-statement in duplicate, setting out the grounds on which he relies to support his application.

(2) The registrar shall send a duplicate of the counter-statement to the objector.

(3) If the applicant fails so to lodge a counter-statement he shall be deemed to have abandoned his application.

(4) The registrar may order that the cost of any proceeding under this section shall be paid by either party and his order shall be enforceable in all respects as if it were an order of a judge of the court.

Hearing of Opposed Applications

117. (1) The registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and the objector.

(2) On the day so fixed, or on any other day to which the hearing is adjourned, the registrar shall hear the applicant and the objector and their respective witnesses, if any, and shall decide whether the application is to be refused or whether it is to be granted either with or without modifications or conditions.

Appeal Against Registrar's Decision

118. (1) The decision of the registrar shall be subject to appeal to the court in like manner and in all respects as if he were a judge of the court.

(2) On such appeal the court shall hear the parties and, if required, the registrar, and shall make an order determining whether and subject to what conditions, if any, the registration is to be permitted.

(3) On the hearing of any such appeal any party may, either in the manner prescribed or by special leave of the court, bring forward further material for its consideration.

(4) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the objector or the registrar other than those stated by the objector as hereinbefore provided, except by leave of the court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the objector on giving notice as prescribed.

(5) In any appeal under this section the court may, after hearing the registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark; but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

Security for Costs

119. If a party giving notice of opposition or of appeal neither resides nor carries on business within the Union, the registrar may order him to give security for costs, and if the order is not duly complied with, may treat the opposition or appeal as abandoned.

Registration and Date Thereof

120. When an application for registration has been accepted and has not been opposed, and the time for notice of opposition has expired, or has been opposed and has been

granted, the registrar shall, unless otherwise directed by the law officer, register the trade mark as on the date of the lodging of the application, and such date shall be deemed to be the date of the registration, and shall issue to the applicant a certificate of the registration of the trade mark in the prescribed form.

Duration of Registration of Trade Mark

121. The registration of a trade mark effected upon an application made under this Chapter shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Chapter.

Assignment of Registered Trade Mark

122. Subject to the provisions of this Chapter, the person for the time being entered in the register as proprietor of a trade mark shall have power to assign the trade mark.

Registration Prima Facie Evidence of Right to Exclusive Use

123. (1) The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark upon the goods in respect to which it is registered and the validity of the registration.

(2) The registration of a person as proprietor of a trade mark shall, after the expiration of seven years from the date of the registration, (in the absence of fraud), be conclusive evidence of the validity of the registration and subject to this Chapter of his right to the exclusive use of the trade mark in respect to the goods in regard to which it is registered, unless the trade mark offends against the provisions of section one hundred and forty.

This sub-section shall not apply to a trade mark registered before the commencement of this Chapter, under a Provincial Trade Marks Act.

(3) Nothing in this Chapter contained shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section one hundred and seven.

Registration a Condition Precedent to Action for Infringement or Damages

124. No person shall be entitled to institute any proceed-

ing to prevent, or recover damages for, the infringement of a trade mark, unless in the case of a registrable trade mark it is registered under this Chapter or under a Provincial Trade Marks Act.

What Constitutes Infringement of Rights Acquired by Registration

125. The rights acquired by registration of a trade mark shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

In an action for the infringement of a trade mark the court, in trying the question of infringement, shall admit evidence of the usages of the trade in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

Registration Not to Interfere With Use by Any Person of His Own Name or Place of Business

126. No registration under this Chapter shall interfere with any *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business or in the use by any person of any *bona fide* description of the character or quality of his goods.

Rights of Action for Passing Off Goods not Affected

127. Nothing in this Chapter contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Renewal of Registration and Duration of Renewal

128. The registrar shall, on application made in the prescribed manner and within the prescribed period by the registered proprietor of a trade mark registered or deemed to be registered under this Chapter, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this Part of this Chapter termed "the expiration of the last registration": Provided that in the case of a trade mark registered in the Transvaal before the commencement of this Chapter the expiration of the last registration shall be fourteen years after such commencement.

Removal of Trade Mark from Register if Conditions as to User or Renewal Not Complied With

129. (1) At the prescribed time before the expiration of the last registration of a trade mark under this Chapter, the registrar shall send notice in the prescribed manner to the reg-

istered proprietor at his address for service in the Union of the date at which the existing registration will expire and the conditions as to proof of substantial user and as to payment of fees and otherwise, upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration as may be prescribed.

(2) Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the registrar that there has been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

Part IV.—Assignment of Registered Trade Marks

Assignment Only in Connection with Goodwill

130. A trade mark when registered may be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill.

Apportionment in Case of Dissolution of Partnership, Etc.

131. (1) In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the registrar may (subject to the provisions of this Chapter as to associated trade marks) on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications (if any) as he may think necessary in the public interest.

(2) Any decision of the registrar under this section shall be subject to appeal to the court.

Part V.—Register of Trade Marks

Particulars to be Entered in Register

132. (1) There shall be kept at the trade marks office a register of trade marks wherein shall be entered particulars—

(a) all registered trade marks, with the name and addresses of their proprietors, together with the date of registration and expiry thereof;

(b) notification of assignments and transmissions, and disclaimers; and

(c) any other matters relating to registered trade marks which are prescribed.

(2) Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form prescribed, may be given to the registrar, who shall thereupon register the assignment or transmission.

Amendment of Register

133. (1) The registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark or by some person entitled by law to act in his name, amend or alter the register by—

(a) correcting any error in the name or address of the registered proprietor of the trade mark; or

(b) altering the name or address of the registered proprietor who has changed his name or address; or

(c) cancelling the registration of the trade mark; or

(d) striking out any goods or classes of goods from those in respect of which the trade mark is registered; or

(e) entering a disclaimer or memorandum relating to the trade mark which does not in any way extend the rights given by the registration of the trade mark.

(2) Where the register has been amended or altered under this section the registrar may—

(a) cancel the certificate of registration of the trade mark and issue a new certificate of registration; or

(b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.

(3) Any decision of the registrar under this section shall be subject to appeal to the court.

Addition to an Alteration of Registered Trade Mark with the Leave of Registrar

134. The registered proprietor of a trade mark may in the prescribed manner apply to the registrar for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the registrar may refuse or grant the leave on such terms as he thinks fit, but his refusal or the terms on which he grants the leave shall be subject to appeal to the court. If leave be granted, the registrar shall cause the register to be altered and shall in the prescribed manner advertise the trade mark as altered.

Rectification to Register by Order of the Court

135. (1) Subject to the provisions of this Chapter the court, on the application of any person aggrieved or of the reg-

istrar, may order the rectification of the register, by—

(a) the making of an entry wrongly omitted to be made in the register; or

(b) the expunging of any entry wrongly made in or remaining on the register; or

(c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the court ought to be inserted; or

(d) the correction of any error or defect in the register.

(2) The registrar shall only make the application to the court under this section in cases where he thinks the application necessary or desirable in the public interest.

(3) The court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) No trade mark which is upon any register of trade marks at the commencement of this Chapter and which under this Chapter is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Chapter to which he would not have been subject under the Acts then in force.

Removal of Trade Mark from Register by Order of Court

136. A registered trade mark may, on application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods, and there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

PART VI.—MISCELLANEOUS PROVISIONS

General Jurisdiction of the Court

137. In addition to any other powers conferred upon it by this Act, the court may in relation to any appeal or application under this Chapter—

(a) refuse to make any order;

(b) order any issue of fact to be tried in such manner as it directs;

(c) order any party to deliver to the court or to the registrar the certificate of registration of any trade mark; and

(d) order any party to pay costs to any other party.

Certification by the Court as to Right to the Exclusive Use of Trade Mark

138. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question, the court may certify that the right to the exclusive use of the trade mark came into question, and was decided in favour of the registered proprietor of the trade mark, and then in any subsequent action for infringement of the trade mark the plaintiff on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the court trying the subsequent action certifies that he ought not to have them.

Power of Registrar to Allow Amendment of Application or Notice of Opposition

139. The registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just.

Scandalous Designs, Etc., not to be Registered

140. No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disentitled to protection in a court of justice or the use of which would be contrary to law or morality, shall be registered as a trade mark or part of a trade mark.

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CHAPTER V

GENERAL AND SUPPLEMENTARY PROVISIONS

A.—General

Seals of Offices

161. There shall be seals of the patent office, the designs office, the trade marks office, and the copyright office, and impressions of any such seal shall be judicially noted and admitted in evidence.

General Powers of Registrar

162. (1) The registrar may, for the purposes of this Act—

(a) receive evidence and determine whether and how far it

shall be given by affidavit or *viva voce* upon oath;

(b) summon witnesses and issue commissions *de bene esse;*

(c) order discovery or inspection, and require the due production, of documents;

(d) award costs against any party to any proceedings before him.

(2) The registrar may, on request in writing accompanied by the prescribed fee, correct any clerical error in any register kept by him under this Act or in any proceedings before him.

(3) Whenever by this Act any time is specified within which any act or thing is to be done the registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.

Notice to Registrar of Application to the Court

163. The prescribed notice shall be given to the registrar by every applicant of any application to the court under this Act.

Taxation of Costs Awarded by the Registrar

164. Any costs awarded by the registrar shall be taxed by a taxing officer of the court and payment thereof may be enforced in the same manner as if they were costs allowed by a judge of the court.

Duty of Registrar in Exercising Discretionary Power to Give Opportunity to Applicant of Being Heard

165. Whenever any discretionary power is by this Act given to the registrar he shall not exercise that power adversely to an applicant without (if so required by the applicant within the prescribed time, if any) giving that applicant an opportunity of being heard personally or by his attorney or agent.

Trusts not to be Registered

166. No notice of any trust expressed, implied, or constructive shall be entered in any register kept under this Act, or be receivable by the registrar.

Register to be Prima Facie Evidence

167. Any register kept under this Act shall be *prima facie* evidence of any matters directed or authorized by this Act to be inserted in that register.

Inspection of Registers

168. The registers kept at any office established under this Act shall, on payment of the prescribed fees, and subject to the provisions of this Act, be open at all convenient times in office hours to the inspection of the public.

Certified Copies of Entries in Registers to be Furnished on Application

169. A certified copy of an entry in any register kept in

any office established under this Act shall, subject to any special provisions to the contrary contained in this Act, be given to any person who applies for such a copy and pays the prescribed fee.

Certificates of Registrar to be Evidence

170. (1) A certificate purporting to be under the hand of the registrar as to any entry, matter or thing which he is authorized by this Act to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or left undone.

(2) Printed or written copies or extracts purporting to be certified by the registrar and sealed with the seal of any office established under this Act and documents purporting, when certified, to be copies or extracts from any register or book or document relating to patents, designs, trade marks or copyright and kept in any such office shall be admitted in evidence in all courts and proceedings without further proof or production of the originals.

Payment of Prescribed Fees to be Made Before Acts Done or Documents Issued or Works Received

171. Whenever under this Act any prescribed fee is payable in respect of any application, registration, matter, document or work, the registrar may refuse to perform the act or to receive or to issue the document or to receive the work (as the case may be) until the fee payable in respect thereof is paid.

Lodging of Documents With and Giving of Notices May be Through the Post

172. Any application, notice or document authorized or required under this Act to be lodged, made or given at the patent office, the designs office, the trade marks office, or the copyright office or to the registrar or any other person, may be sent by letter through the post.

Address for Service and Change of Such Address

173. (1) Any address for service stated in any application or notice of opposition under this Act shall, for all purposes of the application or the notice of opposition, be deemed to be the address of the applicant or of the opponent (as the case may be) and all documents in relation to the application or notice of opposition may be served by leaving them or sending them to the address for service of the applicant or of the opponent as the case may be.

(2) Any address for service may be changed by notice to the registrar.

Persons Under Disability

174. If any person is, by reason of minority, lunacy, or

other disability, incapable of making any declaration or doing anything required or permitted by this Act, then the guardian, curator or other legal representative (if any) of such person or if there be none, any person appointed by the court upon petition on behalf of the person under disability or on behalf of any other person interested in the making of such declaration or doing such thing, may make the declaration or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the person under disability, and all acts done by such substitute shall, for the purposes of this Act, be as effectual, as if done by the person for whom he is substituted.

Substitution of Successor in Interest in Case of Death of Party to Proceedings

175. If a person who is a party to a proceeding under this Act dies pending the proceeding, the registrar or the court (as the case may be) may, upon request made in the prescribed manner and on proof to his or its satisfaction of the transmission of the interest of the deceased person substitute in the proceeding his successor-in-interest in his place or if the registrar or the court is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to be continued without such substitution.

Evidence Before Law Officer and Jurisdiction of Law Officer to Make Order as to Costs

176. Subject to any regulations prescribed in respect of any proceeding under this Act before the law officer, the evidence shall be given by affidavit in the absence of directions to the contrary but in any case in which he thinks it right to do so the law officer may take evidence *viva voce* in lieu or in addition to evidence by affidavit or allow any declarant to be cross-examined on his declaration. The law officer may order costs to be paid by either party and such order may on the application of either party be made an order of the court.

Application to Law Officer for Directions

177. The registrar may, in case of doubt or difficulty arising in the administration of any provisions of this Act which are to be administered by the registrar, apply to the law officer for directions in the matter.

Agency

178. Subject to the provisions of this Act, the registrar shall permit an agent to do on behalf of the person for whom he is agent any act in connection with registration under this act or any procedure relating thereto.

B.—Offences and Penalties

Penalties for Making False Entries in Registers, Etc., for Producing or Tendering False Entries

179. Any person who—

a) makes or causes to be made a false entry in any register kept under this Act; or

b) makes or causes to be made a writing falsely purporting to be a copy of an entry in any such register; or

c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof,

knowing the same to be false, shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding three years.

Penalty for Making False Statements for the Purpose of Deceiving or Influencing Registrar or Other Officer

180. Any person who—

(a) for the purpose of deceiving the registrar or any officer in the execution of the provisions of this Act; or

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes a false statement or representation knowing the same to be false, shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding one year.

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Penalty for Practising as a Patent Agent Unless Registered as Such

182. Any person, not being a registered patent agent or an attorney, who practises or acts as a patent agent, and any person, not being a registered patent agent, who describes himself as a patent agent, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds.

Penalty for Use of Words "Patent Office," etc., on Place of Business

183. Any person who uses on his place of business or on any document issued by him or otherwise the words "patent office," "designs office," or "trade marks office," or "copyright office," or any other words suggesting that his place of business is officially connected with or is one of the offices established under this Act shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.

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Penalty for Falsely Describing as Registered a Design Which is Unregistered and Placed on any Article Sold by Him

185. (1) Any person who falsely represents as being registered a design or trade mark which is not registered and which is applied to any article sold by him shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds.

If any person sells an article on which there is stamped, engraved or impressed, or to which there is otherwise applied the word "registered" or any other word expressing or implying that the design or trade mark applied to that article is registered he shall be deemed for the purposes of this subsection to represent that the design or trade mark applied thereto is a registered design or trade mark.

(2) Any person who after a copyright in a design has, in accordance with Chapter II, expired, puts or causes to be put on any article to which the design has been applied the word "registered" or any word or words implying that there is a subsisting copyright in the design shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds.

Penalty for the Unauthorized Use of Royal Arms or Union Arms

186. (1) The grant of a patent or the registration of a design or trade mark under this Act shall not be deemed to authorize the patentee or registered holder of the design or trade mark to use the Royal Arms or the Arms of the Union on any article.

(2) Any person, who, without the authority of the King or of some member of the Royal Family or of the Governor-General in person (the burden of proof of which authority shall be upon the accused), assumes or uses in connection with any patent, design or trade mark, the Royal Arms or arms so nearly resembling the Royal Arms as to be calculated to deceive in such a manner as to be likely to lead other persons to believe that he is carrying on his trade, business, calling or profession by or under such authority, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.

(3) Any person who, without the authority of the Governor-General-in-Council (the burden of proof of which authority shall be upon the accused), acts in connection with the Arms of the Union in manner described in sub-section (2) in relation to the Royal Arms shall be guilty of an offence and liable on conviction to the penalty mentioned in that sub-section.

Penalties in Respect of Defaulting Witnesses

187. (1) Any person who, having been duly summoned to

appear as a witness before the registrar, fails without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons shall be guilty of an offence.

(2) Any person who, having appeared as a witness before the registrar, refuses without lawful excuse to be sworn or to make affirmation, or to produce documents, or to answer questions which he may be lawfully required to answer shall be guilty of an offence.

(3) Any person guilty of an offence mentioned in this section shall be liable on conviction to a fine not exceeding fifty pounds.

Imprisonment in Default of Payment of Fines

188. Whenever under this Act an offence is punishable by a fine the court which imposes the fine may, without prejudice to the provisions of any law authorizing the seizure and sale of the movable property of the offender to pay the fine, sentence the offender to imprisonment for a period—

a) not exceeding seven days, if the fine imposed do not exceed five pounds;

b) not exceeding fourteen days if the fine imposed do not exceed ten pounds;

c) not exceeding one month, if the fine imposed do not exceed twenty-five pounds;

d) not exceeding three months if the fine imposed exceed fifty pounds, unless the fine be sooner paid.

Special Jurisdiction of Magistrate's Court

189. A magistrate's court shall have special jurisdiction to impose the maximum penalties prescribed for an offence against this Act punishable by a fine, anything to the contrary notwithstanding in any law relating to magistrate's courts.

C.—SUPPLEMENTAL

References in Certain Laws to Provincial Laws to be Construed as Being References to Corresponding Provisions of this Act

190. Any reference in any law in force prior to the 31st day of May, 1910, to any Provincial Patent Act, Provincial Designs Act, Provincial Trade Marks Act or Provincial Copyright Act (and not being itself such an Act) shall be construed as being a reference to the corresponding provisions, so far as possible, of this Act.

. . . . . .

Fees and Regulations

192. (1) The Governor-General may prescribe a tariff not inconsistent with this Act, of the fees which shall be payable to the registrar in respect of any application, registration, matter

or document or work and the fees shall be payable as so prescribed.

(2) The Governor-General may also make regulations, not inconsistent with this Act, as to all matters which by this Act are required or permitted to be prescribed by regulation or which are necessary or convenient for giving effect to the provisions of any Chapter of this Act or for the conduct of any business relating to any office established by this Act.

(3) If either House of Parliament resolve within thirty days after any such tariff or regulation has been laid on the Table thereof in accordance with law that any item of the tariff or that the regulation shall be disallowed, then such item or regulation shall thereupon become of no effect, without prejudice to the validity of anything done in the meanwhile thereunder or to the power to make a new tariff or regulation.

Interpretation of Terms

193. In this Act, unless inconsistent with the context—

"imprisonment" shall mean imprisonment with or without hard labour as the court which passes sentence may direct;

"law officer" shall mean such law adviser of the Union Government, as the Minister may designate by notice in the *Gazette,* to exercise the powers and to perform the duties in any one or more Provinces or other areas of the Union, conferred or imposed by this Act upon the law officer;

"prescribed" shall in relation to proceedings before the court mean prescribed by rules of court and in relation to other matters shall mean prescribed by or under the authority of this Act or the regulations;

"register" shall in Chapter V mean any register kept under this Act and in any other Chapter of this Act mean a register kept in accordance with that Chapter;

"registrar" shall mean the registrar of patents, designs, trade marks and copyright appointed under this Act and when used in Chapters I, II, III and IV shall be respectively the registrar of patents, the registrar of designs, the registrar of trade marks, or the registrar of copyright, as the case may be;

"regulation" shall mean any regulation made and in force under this Act;

"the court" shall, subject to the provisions of section thirty, mean in respect of any matter the provincial or local division which by law has jurisdiction in respect of that matter;

"this Act" shall include any rules of court or any regulations made thereunder.

Any expression defined for the purposes of any Chapter of

this Act shall when used in any other Chapter, bear the meaning assigned to it in the Chapter in which it is defined.

Repeal of Laws

194. Subject to the provisions of this Act, the laws mentioned in the Fifth Schedule to this Act are hereby repealed to the extent specified in the fourth column of that Schedule*: Provided that the repeal of any such law relating to a matter for which provision is made by any particular Chapter of this Act shall take effect at the commencement of that Chapter.

Short Title

195. This Act may be cited for all purposes as the Patents, Designs, Trade Marks, and Copyright Act, 1916.

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*Repealing *in toto* the respective legislation of the Provinces of Cape of Good Hope, Natal, Transvaal, and Orange Free State.

SPAIN

LAW OF MAY 16, 1902 *

TITLE I

General Dispositions

Article 1. Industrial property is the right that is recognized by this law, provided that the conditions that the same imposes have been fulfilled, with respect . . . to the special signs with which the producer desires to distinguish from similar objects the results of his labor; . . . to the trade name or to industrial recompenses, and to the right to prosecute illicit competition and false indications of origin.

Art. 2. The right of industrial property may be acquired by virtue of:

A) . . . . . .

B) Distinctive marks and signs of production and of commerce . . .;

C) The trade name; and

D) Industrial recompenses.

Industrial ownership is applicable, not only to the products of industry properly so called, but also to those of agriculture, such as wines, oils, grains, fruits, cattle, etc., and to mineral products destined for commerce, such as mineral waters and other materials.

Art. 3. Any Spaniard or foreigner, whether he be an idividual or a legal person that claims to establish or that may have established on Spanish territory a new industry, shall have a right to its exclusive exploitation during a certain number of years, on complying with the rules and conditions established in this law.

. . . . . .

Art. 6. Spaniards or foreigners, individually or as legal persons, may solicit the registration of the distinctive marks or signs with which they intend to distinguish the production or business to which they devote themselves, as also their . . . trade name and the industrial recompenses that they may have obtained.

If the registration should be conceded, they shall have the right to the protection of the mark, name, . . . or recompense,

* Matter not relating to trade marks is omitted.

in the form and under the conditions that are determined in the present law.

ART. 7. The right to which the preceding article refers is acquired by means of the grant by the Government of a certificate-title of the registration of the mark, . . . trade name or industrial recompense.

ART. 8. Every concession of industrial property will be granted without prejudice to the rights of third parties.

ART. 9. Every concession of industrial property will be indivisible as regards the object, process, product or result that may have served for its grant, without prejudice to the transfers that by the will of the grantee or by virtue of law may be effected as to the rights or profits guaranteed by the concession in question.

ART. 10. Concessions of industrial property are transferable by all the methods that the law recognizes, but these transfers shall not be effective with respect to third parties until they have been entered in the Registry of Industrial Property by means of a public document. Said concessions are lost by nullity or forfeiture as provided in the present law.

ART. 11. There are punishable: Falsification, usurpation, imitation, illegal competition and false indication of origin.

TITLE II

LEGAL CONCEPT OF INDUSTRIAL PROPERTY IN ITS DIFFERENT MANIFESTATIONS

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CHAPTER II

SECTION I

Marks

ART. 21. By mark is understood any sign or material means, whatever be its class and form, that serves to distinguish products of industry and of labor, with the object that the public may know and distinguish them, without fear of confounding them with others of the same kind.

ART. 22. There may especially constitute a mark: names under a distinctive form, denominations, labels, covers, containers or receptacles, stamps, seals, vignettes, selvages, embroidery, filigrees, engravings, arms, emblems, reliefs, figures, devices, etc., it being understood that this enumeration is purely enunciative and not limitative.

. . . . . .

ART. 23. The following may make use of a mark:

a) Agriculturists, in order to distinguish the products of the earth, of agricultural industries, of the live stock industry, and, in general, of any agricultural, forestry or extractive exploitation;

b) Manufacturers, in order to distinguish the products of their factory;

c) Merchants, in order to distinguish the products that they buy in order to resell the same under their responsibility and guarantee;

. . . . . .

ART. 25. There may also make use of a collective mark: syndicates or non-mercantile associations, to distinguish the products of the labor of all of the individuals of the body; municipal corporations, to differentiate the products of their municipal district; deputations, for those of their respective provinces, and individuals, to distinguish certain products of determined territories or regions.

ART. 26. Under the name of international marks, and until otherwise determined, are designated those that, by virtue of "the Resolution of the Conference of Madrid," dated April 14, 1891, by reason of their having been deposited in the International Office at Berne, are registered and protected in Spain and in all the nations adhering to the said Convention, except in case the Administrations of those countries may have denied protection, making use of the power conferred upon them by Art. 5 of the said Convention.

ART. 27. Marks that manufacturers and merchants are obliged to inscribe in a General Direction of Customs and with which they must distinguish the goods of their manufacture or trade in order that they may circulate freely in the country, shall be considered as simple marks put on goods at the custom house for purposes of transit, or of origin of manufacture, and as such are not subject to the prescriptions of the present law.

ART. 28. The following may not be adopted as a mark, sign or distinctive of production:

a) National, provincial or municipal arms or coats of arms and Spanish insignia or decorations, unless authorization be shown therefor; in this case, they cannot constitute a mark by themselves, being only an accessory to the principal distinctive. The following may concede authorizations: The Ministry of Agriculture, Industry, Commerce and Public Works, respecting the National arms and coats of arms; Provincial Deputations and Municipal Corporations, those relative to their own, and the Ministry of State, those referring to the Spanish insignia or decorations;

b) The arms, insignia, blazonments or mottoes of States or foreign nations without the express consent of the respective Governments; and in case of obtaining it, they shall figure as accessory elements of the principal mark;

c) Denominations generally used in commerce to distinguish goods and classes of products, as well as technical or common names, adopted through current use to distinguish them;

d) Figures that offend public morals and caricatures that tend to ridicule ideas, persons, or objects worthy of consideration;

e) Distinctives for which others may have obtained with priority a certificate of registration for the same class of products, merchandise or objects, while the said right has not become void in accordance with this law;

f) All distinctives that through their likeness or resemblance to others already granted may lead to confusion or error;

g) Those relating to any religious cult whatsoever, whenever from the mark as a whole it may be deduced that it is intended to ridicule, disparage or injure it;

h) The distinctive, emblem and device of the Red Cross; and

i) The portraits or names of living persons, unless the corresponding permission is obtained from them, and of persons that may have died, while the relatives within the fourth civil degree are opposed to the concession.

ART. 29. A mark shall be made obligatory for chemical and pharmaceutical products, and such others as special regulations may determine.

SECTION II

NATURE AND JUDICIAL EFFECTS OF MARKS

ART. 30. The ownership of marks is to be compared to that of movable goods. The modes of acquiring this ownership are those recognized by the Civil Law; but in order to be protected by the present law, it will be indispensable to have obtained the corresponding certificate-title of inscription in the Register of Industrial Property.

The certificate-title to which the preceding paragraph refers constitutes a *juris tantum* presumptive of ownership. The ownership of a mark shall be prescriptive after three years of uninterrupted possession in good faith and just title.

When two or more solicit the registration of the same mark, . . . the right of priority shall belong to him that shall have first presented his application, according to the day and the

hour in which it shall appear registered.

ART. 31. The subjects or citizens of each one of the States that constitute the Union for the Protection of Industrial Property shall enjoy equal rights, in accordance with the prescriptions of Art. 2 of the International Convention of Paris of March 20, 1883.

Foreigners whose States do not form part of the cited Union shall have the rights that are stipulated in treaties, and when there are none, the principle of reciprocity shall be observed with all rigor.

ART. 32. All those that, in accordance with this law, obtain a certificate of ownership of a mark . . . are authorized:

1) To prosecute criminally before the Courts those that may use marks . . . that are falsified or imitated in such a manner that they may be confounded with the true ones, or, which although being legitimate for others, they are not authorized to use, as well as those that, without falsifying a mark, remove or separate it from some products in order to apply it to others;

2) To petition civilly before the ordinary Courts indemnifications for all damages and losses that may have been occasioned by all that to which the preceding paragraph refers;

3) To demand civilly equal indemnification from the merchant that suppresses the mark or sign of a producer without his express consent, although the latter cannot prevent him from adding separately his own mark or distinctive sign of his business; and

4) To oppose the grant of a certificate of ownership of a mark . . . when that which is solicited is included in the paragraphs marked with the letters (e), (f) and (i) of Art. 28.

CHAPTER III

TRADE NAME

ART. 33. By trade name is understood the name, firm name, or designation, under which an agricultural, manufacturing or mercantile establishment is made known to the public.

ART. 34. The following shall be considered as the name of an agricultural, manufacturing or mercantile establishment:

a) The surnames, with or without the Christian name, in full or abbreviated, of agriculturists, of manufacturers, or of the merchants, that possess them;

b) Styles or signatures of firms;

c) The designations of mercantile companies in all their forms;

d) Fancy or special designations; and

e) The designations of lands destined for an agricultural, industrial, or commercial enterprise.

ART. 35. Independently of the mercantile registration of which Art. 16, of the present Code of Commerce treats, any agriculturist, industrial, or merchant, Spanish or foreign, domiciled in Spain, may request, individually or collectively, the inscription in the Register of Industrial Property, of his respective trade name.

ART. 36. The registration of a trade name is effective, but will only constitute this exclusive ownership by means of that procedure that, from the date of the inscription, will produce legal effects.

ART. 37. When a name or a denomination is employed at the same time as a mark and as a trade name, it must be entered separately in the two Registers, because the first represents the distinctive mark for the objects elaborated and offered to the consumer, and the second is only applied to the samples or showbills, cases and other accessories, used in order to distinguish the establishment.

ART. 38. The registration of a trade name will be denied:

a) When the name, firm name, or denomination, is not distinguished sufficiently from another trade name already registered;

b) When without the express consent of the proprietor of a trade name already registered, accredited by a legal document, these words are used: "formerly establishment of ——," "formerly factory of ——," etc.; "formerly manager of ——," "formerly chief of the workshop of ——," "employé of ——," "ex-Director of ——," etc.; "successor or successors of ——," "branch office of ——," or "representative of ——," or other similar terms.

If for any of these motives or on account of opposition in accordance with the preceding paragraph, the petition for registration is not acceded to, the interested party will be notified to the end that he may modify, complete or withdraw his petition.

ART. 39. The possessor of a certificate of registration of a trade name is the only one that may add to his name the mention of "registered" ("registrado").

ART. 40. Modifications and changes of a trade name will be the object of a new registration.

ART. 41. The possessor of a registered trade name has the same rights that belong to the possessor of a registered mark, which are detailed in Chapter 2 of Part II of the present law.

CHAPTER IV

Industrial Recompenses

Art. 42. By industrial recompenses there shall be understood medals, mentions, honorable distinctions, or any other awards obtained in competitions or expositions organized or authorized by an official entity, and those granted by Academic Corporations or Societies legally constituted and recognized.

Art. 43. The public use of these recompenses, as well as the right to make mention of them on a product or its wrapper, as well as in circulars, announcements, handbills, cards, envelopes and other commercial papers, belongs exclusively to those individuals and firms that may have obtained them, and their representatives, it being necessary to indicate, in using them, the date on which they were granted and the entity in the exposition or competition that conceded them.

Art. 44. Spaniards and foreigners established in Spain may request individually or collectively the inscription in the Register of Industrial Property of the titles, diplomas, or other documents that authorize the distinctives obtained for the objects of their production and trade.

Art. 45. The registration of industrial recompenses gives rights to their possessors to show them at the side of their marks, with mention of their registration.

Art. 46. The possessor of a registered industrial recompense has the same rights that belong to the possessor of a mark, detailed in Chapter 2 of Title II of this law.

TITLE III

Duration of the Rights Derived from the Registration of Industrial Property and the Fees that Those Interested Must Pay to the State

CHAPTER I

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CHAPTER II

Duration and Fees of Marks

Art. 51. The maximum duration of the registration of a mark . . . will be twenty years, counting from the date of the issue of the certificate, and the concession is understood as made for all Spanish territory.

The registration of marks will always be renewable by means of the same procedure prescribed for obtaining the first registration.

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ART. 52. The registration of a mark . . . will be subject to the payment of a fee of 100 pesetas in stamped paper to the State, which shall be made for periods of five years and progressively, in this form: That of the first five-year period, which will be 10 pesetas for marks . . . will be payable within fifteen days from the publication of the concession of the mark . . .; those of the three remaining five-year periods must be paid before the termination in each year of that month in which the certificate was issued, paying 20 pesetas in the second five-year period, when it relates to marks, . . . 30 in the third, and 40 in the fourth, and enjoying for the delays in making payments the times indicated in Art. 49, with the fines established in the same.*

ART. 53. The fact of not paying any of the fees set forth in the preceding article will be considered as a renunciation on the part of the interested party of the benefits of the registration and in virtue thereof the same will be forfeited.

CHAPTER III

DURATION OF THE REGISTRATION OF A TRADE NAME AND OF INDUSTRIAL RECOMPENSES, AND THE FEES THAT THESE INSCRIPTIONS MAKE PAYABLE

ART. 54. The duration of the registration of a trade name and of industrial recompenses is unlimited. Nevertheless, all changes and alterations made in them must be entered in the Register, not only to preserve their legal validity against third parties, but also because they may affect the lapsing of their registration, whether it may be by the voluntary act of the proprietor, or by the extinction of the firm, or by the disappearance of the legal personality that possesses it.

ART. 55. The cost of the inscription of a trade name will be 25 pesetas, payable at one time in stamped paper to the State.

For each inscription of an industrial recompense 5 pesetas will be payable.

PART IV

PROCEDURE WITH RESPECT TO APPLICATIONS RELATING TO INDUSTRIAL PROPERTY, AND THE ISSUE OF TITLES AND CERTIFICATES

ART. 56. All those who may desire . . . to register a mark, . . . trade name, or industrial recompense, shall file the docu-

*ART. 49.—The first tax will be paid within the fifteen days following the publication of the concession, and the subsequent taxes before the end of that month in each year on which the patent was issued, or else within the three months following, with a fine of 10, 20 or 30 pesetas, respectively, for one, two or three months of delay, payable also in stamped paper to the State.

ments that are provided for in this law in the Secretariats of the Provincial Civil Governments, with the exception of Madrid, where they shall be left directly at the Ministry of Agriculture, Industry, Commerce and Public Works.

ART. 57. The Chief of the Registry of this Department, as well as the Secretaries of the Civil Governments, in the act of receiving the documents and objects that are presented, shall note in the special Register for this purpose, the day, the hour and the minute of the presentation.

Immediately upon the receipt thereof, and setting forth the circumstances stated, they shall give a receipt to whoever may present the documents, who on his part shall sign the above mentioned Register book.

ART. 58. Within a term of five days, counted from the date of the presentation, the Civil Governors of the Provinces shall remit to the Ministry the applications relative to industrial property, with an accompanying certification of the act of registration of each application, drawn up by the Secretaries and viséd by them, the costs of remitting same being at the charge of the party interested.

ART. 59. It is optional with the interested parties either to make the applications themselves or by means of representatives upon whom they confer or have conferred sufficient power for the same.

The Government of His Majesty shall regulate the conditions of the service; but shall not deprive any one that possesses any professional title, and is qualified for the exercise of his profession, by having paid the industrial tax, of the right that is recognized in the preceding paragraph of acting as the representative of another.

CHAPTER I

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CHAPTER II

APPLICATIONS FOR MARKS . . .

ART. 74. The documents that must be presented in order to obtain registration of a mark, design or model, are:

1. An application to the Minister, formulating the petition for the mark . . . whose registration it is desired to obtain, containing always in it the Christian name, surname or style, and habitual domicile, of the interested party, as well as that of his representative, if he should transact the business; the

concrete enumeration of the products that the mark that is solicited is to distinguish, and an indication as to whether the mark has already been registered abroad or not;

2. A detailed description in duplicate, in which is expressed with all clearness the class of the mark adopted, the figures and signs that it may contain, the goods upon which it will be affixed, imprinted or employed and the name of its owner. . . . This description shall be written, typewritten or printed on sheets of paper 32 x 22 centimetres, with a margin on the left, in which shall be affixed a stamp of five centimos de peseta on each sheet;

To each one of the copies of this description shall be added, stitched, a sheet of equal size, or double, with the design of the mark . . . that it is desired to register, expressing its scale, and in which shall be represented the shadings, tints or colors that the interested party believes it convenient to employ, in order to give an exact idea of the mark, design or model. This sheet shall also bear affixed the corresponding adhesive stamp.

The descriptions to which the preceding paragraphs refer shall be formulated in the Castillian language, without abbreviations, corrections or erasures.

3. Another description, similar to the foregoing, written by hand, typewritten, autographed, or printed on half sheets of foolscap written on one side only for its publication in the *Boletín;*

4. An engraving or typographic *cliché* in order that the design of the mark, . . . may be printed in black, to be published jointly with the description in the *Boletín.* It shall be accompanied, moreover, by ten proofs or impressions of the design referred to. This *cliché* shall have at the maximum 10 centimetres of length by 8 in width;

. . . . . .

5. Foreigners, subjects of the countries that belong to the Union, or that by virtue of the Treaties enjoy the rights of reciprocity, must present a certificate of registration in the country of origin of the mark . . . . This document must be legalized by our Consul, and the signature of the latter, by the Minister of State. It will be sufficient if the translation of the certificate be private.

ART. 75. When manufacturers desire to keep secret the method and form employed in the mark . . ., they shall so express it in their application, describing it in a closed and sealed envelope, which only will be opened in case of litigation.

ART. 76. All the documents named in the preceding articles

shall be presented in the form mentioned in the final paragraph of Art. 60.*

ART. 77. The application being received and registered, the descriptions shall be compared with each other and the exactitude of the same with relation to the *cliché* shall be verified.

In the affirmative case the documents shall be sealed and signed by the Secretary, cancelling the adhesive stamps, and, if there should be no defects in the documentation, such as the lack of the *cliché* or of the descriptions, they shall be published immediately in the *Boletín Oficial de la Propiedad Intelectual e Industrial.*

ART. 78. If defects shall be found in the papers, they shall be stated in the application papers and there shall be conceded a term that shall not exceed two months, in order that the interested parties or their representatives may amend them.

ART. 79. The notification of the existence of these defects shall be made by means of the *Boletín,* publishing in it the petition for the mark . . . with their corresponding descriptions and *clichés.*

ART. 80. In the notification must be clearly specified the defect referred to. The term for the amendment of which Art. 78 treats shall begin to count from the publication, being unprorogable, and once expired, the application for the registration of the mark . . . shall be declared void.

ART. 81. The publication of which the preceding article speaks being made, and counting from its date, a term of two months shall be conceded in order that those that believe that they have a right to oppose a mark . . . may formulate the corresponding opposition by means of a notice presented to the Ministry.

ART. 82. Having executed what has been provided in the preceding articles the Registry of Industrial and Commercial Property shall report, stating:

1) If the form of the application and all the papers sent in by the interested party are found to agree with what is provided in Art. 74 of this law.

2) When that which is to be registered is a mark, if it is found to be included in any of the cases of Art. 28. . . .

3) Whether, in view of all that set forth, it shall proceed to concede or refuse the registration of the mark . . . .

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*ART. 60. (Referring to Patents.)—All these documents shall be presented in an envelope of a size and sufficient resistance in order that it may contain them without suffering any damage, and without the necessity of folding them. On the outside of this envelope the Secretary of the Civil Government or the Chief of the Registry of the Ministry, shall stamp the seal of their respective offices, and shall set forth the date, hour and minute of their presentation.

ART. 83. When it is found that a mark is comprised in the cases mentioned in paragraph (f) of the above cited Art. 28, whether the instrument in opposition be formulated or not, according to the tenor of paragraph 4 of Art. 32, the resemblance noticed will be officially communicated to the petitioner, in order that within the term of fifteen days he may retire the petition, if it be thus convenient to him, modify it sufficiently to destroy the likeness, or present a legal document by which the original grantee consents to the registration.

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ART. 84. The term within which the Registry of Industrial Property shall have in order to issue the report prescribed in Art. 82 shall be fifteen days, to count from the date on which terminates the term of two months for the publication in the *Boletín* of the marks, designs and models.

When the fact of which the preceding article speaks shall occur, the Registry shall give its report within the term of three days, to count from the termination of the term expressed in said article.

ART. 85. The Minister, or the Director General of Agriculture, Industry and Commerce, by delegation of the same, shall decide the applications to which this chapter refers within a term of fifteen days.

ART. 86. Against the decisions mentioned in the preceding article in matters of marks . . ., the interested parties may enter a contentious-administrative appeal in the form and conditions provided for by the laws in force in the matter.

ART. 87. The registration of the mark . . . being granted, the decree having been published in the *Boletín Oficial,* and before proceeding with the final inscription in the registration albums, the interested parties or their representatives, within the fifteen days following, shall pay in Government stamped paper the quota corresponding to the first five years.

Should the payment of which the preceding paragraph speaks not be made within the term specified, the mark . . . shall not be inscribed in the Registers, the lapsed grant annulling it.

ART. 88. The payment having been made, there shall be signed within a term of eight days, counting from the date on which it was made, the certificate-titles, in the lower part of which shall be left a sufficient space in order that there may be affixed to it one of the proofs of the mark, . . . authenticated with the seal of the Registry and signed by the Secretary. On the back of the certificate shall be printed the entire text of Art. 32 of this law. This certificate-title shall be furnished with

a stamp of the value specified by the law in force on this matter, which will be cancelled in the form prescribed in Art. 68.*

ART. 89. The titles being completed, they will be placed at the disposition of the interested parties, or their representatives, to whom they will be delivered jointly with one of the copies of the description of the mark that accompanied their petition, they signing the receipt in the file, which with this proceeding will be considered as complete, and shall be transferred to the archives.

CHAPTER III

APPLICATIONS FOR THE REGISTRATION OF TRADE NAMES AND INDUSTRIAL RECOMPENSES

ART. 90. The documents necessary for the registration of a trade name or of industrial recompenses are:

1. A petition soliciting the registration, and setting forth the Christian name, surname and habitual domicile of the interested party and of his representative, if the latter shall undertake the registration;

2. A complete and detailed description of the trade name accompanied by three copies thereof;

3. A typographical *cliché* (electrotype) which may be a reproduction, in reduced size, of the said trade name, used to distinguish the establishment; and

4. Ten proofs or impressions of the above mentioned *cliché*.

For industrial recompenses, in place of the documents required under the numbers 2, 3, and 4, there shall be presented:

a) The originals of the diplomas and other documents that prove the ownership of the recompenses that are to be registered, which shall be opportunely returned to the interested party after establishing his identity;

b) A duplicate note, if the diploma does not express it, of the nature of the products to which it refers, or the motive for which the recompense was granted; and

c) A literal copy of the said diplomas if they are Spanish, or a private translation if they should be in a foreign tongue.

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*ART. 68. (Referring to Patents)—The payment to which the preceding article refers being made within a term of eight days, counting from the date of same, the title of the patent shall be issued and signed, and after presentation by the interested party or his representative, of a stamp to be affixed to the patent, of the value required by the Stamp Act in force, an entry having been made in the corresponding Register book, the stamp having been cancelled with the seal of the Bureau, it shall then within three days be placed at the disposition of interested parties or their representatives, together with one of the copies of the specification and drawing accompanying the application, they signing a receipt for the documents thus issued; with this transaction the case is concluded and shall be passed to the archives.

These copies or translations shall be made on stamped paper of one peseta.

ART. 91. The presentation of these petition documents shall be made in the form prescribed in Art. 56 and in the final paragraph of Art. 60.*

ART. 92. The proceedings in these applications in the Registry of Industrial Property and the terms for the correction of their defects, if they should have any, publication in the *Boletín,* oppositions to the registration of the trade names, appeals against decisions that are given, the payment of the fees due to the Registry and to which Art. 55 refers, shall be those provided for in the preceding chapter, without any other exception, treating of industrial recompenses, than that of proceeding with its registration within thirty days after the announcement of the petition in the *Boletín Oficial,* except in case of opposition.

TITLE V

ASSIGNMENT AND TRANSFER OF RIGHTS OF INDUSTRIAL PROPERTY

ART. 93. In order that the assignment and transfer of rights of industrial property in their various manifestations may have effect against third parties, it is indispensable that it be done by a public instrument.

ART. 94. The registration of every act involving a modification, whatsoever may be its importance, in a right of industrial property, must be effected directly by presentation at the Office of the Registry of Industrial Property of a notarially legalized copy of the act or contract of cession or modification of the right, accompanying it with 15 pesetas in Government stamped paper for the fees of registration.

ART. 95. The official charged in the Registry with the entry in the corresponding book of the transfers and modifications of rights of industrial property, after having satisfied himself by the examination of the registry books and of the respective files that the . . . mark . . . had all its legal validity at the date of the execution of the act of transfer, shall enter the particulars on the respective file and shall propose the entry, and that the corresponding certificate shall be issued in favor of the new proprietor if he may have solicited it.

ART. 96. There shall be published monthly in the *Boletín de la Propiedad Intelectual e Industrial* a detailed statement of the transfers and modifications of the rights of industrial property that have been registered in the preceding month.

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*See footnote to Art. 76.

TITLE VII

Nullity and Forfeiture of Rights of Industrial Property

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CHAPTER II

Forfeiture of Marks, Designs and Models

Art. 109. Marks, designs and models shall lapse:

1) For having outrun the time fixed for their duration;

As the registration of marks is renewable, the interested parties must demand, in order to avoid the declaration of lapsing, the renewal before the expiration of the term of twenty years for which they were conceded;

2) For lack of payment of any of the quinquennial taxes established in Art. 52 of this law;

3) By the extinction of the personality to whom belonged the use of the mark, . . . without being legally substituted by whoever is to succeed him, or by the failure to use the said mark . . . during three consecutive years, unless in cases of *force majeure* duly proven;

4) By executory sentence of a competent Court, but only as regards the person defeated by the judgment;

5) By the wish of the interested party;

6) At the instance of persons or corporate bodies that, by virtue of the present law, may have right to the use of marks, . . . who may demand at any time the avoidance of those already registered, presenting to this effect the necessary justifications: when as the result of these, questions of ownership and possession arise, the Minister shall suspend the course of the administrative proceedings, and shall refer the parties to the ordinary Courts in order that they may establish the rights to which they believe themselves entitled.

Art. 110. Avoidance may be declared *ex oficio* by the Administration when it is possessed of the necessary data for doing it.

Art. 111. Three months having passed from the publication in the *Boletín de la Propiedad Intelectual e Industrial* of the avoidance of the registration of a mark, this distinctive sign shall remain free, at the disposition of him that may desire to adopt it and to solicit a new registration in his name according to the present law.

CHAPTER III

Lapsing of the Use of a Trade Name and of Industrial Recompenses

Art. 112. The right to the use of a trade name and of

industrial recompenses will lapse:

1) By the disappearance or extinction of the personality to whom these belong, without being legally substituted by whoever may succeed him, or by the non-use of the said name and recompense, for industrial and commercial purposes, during three consecutive years, except in cases of *force majeure* duly proven;

2) By final judgment of a competent Court.

ART. 113. The petition for the registration of a trade name or industrial recompense shall be declared null if the registration fees pointed out in Art. 55 have not been paid.

TITLE VIII

PUBLICITY OF THE OFFICIAL FILES AND OF THE REGISTRY OF INDUSTRIAL PROPERTY

ART. 114. The archives of the Registry of Industrial Property are public, and shall be open during the office hours of the Ministry, for the purpose of examining therein, after previous petition in writing, . . . the designs and descriptions of marks, of trade names, and the copies of diplomas of industrial recompenses.

ART. 115. It will be permitted to make copies of these documents, and if the interested parties should desire to have them certified by the Secretary of the Registry of Industrial Property, the latter, after comparing them with the respective originals, shall certify them with his signature and the seal of the Registry.

The dues that must be paid for this service shall be five pesetas in Government stamped paper.

ART. 116. The Registry of Industrial Property existing in the Ministry of Agriculture, Industry, Commerce and Public Works will be the administrative organism charged with this service. Its organization and functions, apart from those definitely pointed out by this law, shall be determined by the Minister, who shall fix the number and stipend of the officials who may compose it, taking into account and having care that they satisfy the legal-administrative and technical necessities of office that the best service requires.

ART. 117. The Registry of Industrial Property shall edit and publish in the *Boletín Oficial* of the department within the first quarter of each year a report, in which shall be enumerated the work done during the previous year, followed by a comparative statement of the receipts that the various matters transacted may have brought in and the expenses incurred for the personnel and material, to the end that it may be known

with exactitude what this branch of the Public Administration produces or costs the State.

ART. 118. In compliance with the stipulations of Art. 12 of the International Convention of March 20, 1883, the archives and deposit of models, the charge of which belongs to the Registry of Industrial Property, shall be organized in a form which permits the communication to the public . . . of marks, and, in general, of whatever pertains to the service of industrial property.

In this deposit and archives shall be kept all completed files referring to industrial property in its various manifestations, the models or samples that may have accompanied the same, the *clichés* of the marks, a copy of the album-registers of the same, as well as the official publications referring to this service that are received at the Registry, and those of a technological character that may be acquired by the same.

ART. 119. These general archives shall be in the charge of one of the officials of the Registry of Industrial Property, who, named by the Minister, with the title of "Secretary of the Registry of Industrial and Commercial Property," shall issue such certificates as are solicited of the documents existing in the archives and the entries at the Registry, upon the payment of the fees that may be due, according to the length of the document, at five pesetas per sheet, which must be paid in Government stamped paper.

ART. 120. These certifications, duly viséd by the Chief of the Registry, shall be received as evidence in the courts, and in order that they may have legal effect in foreign countries, the signatures of the Chief and the Secretary shall be registered in the Legations or Consulates of all the countries that may have accredited their representatives in Madrid, in order that consular legalization may be directly procured of documents referring to industrial property.

ART. 121. The *Boletín de la Propiedad Intelectual e Industrial* created by Royal Decree of August 2, 1886, is the organ of the Registry of Industrial Property, and there shall be made therein all the publications referred to in Arts. 18, 62, 67, 74, 77, 79, 87, 92, 96, 108, and 111 of this law, by means of fortnightly statements, unless it is ordained to the contrary by any of the cited articles.

ART. 122. In addition to these statements, there shall be published in the *Boletín* corresponding to the sixteenth day of each month another of all the titles of . . . certified titles of marks . . . issued in the preceding month. In the number of the *Boletín* corresponding to the first day there shall be in-

serted, lastly, another statement of the . . . marks . . ., the annual or quinquennial taxes for which must be paid within the month next following and of those others that may be satisfied by means of a fine.

ART. 123. For the formation of the subject-matter index referred to in Art. 5 of the above cited Royal Decree of August 2, 1886, and of the catalogue mentioned in the additional dispositions of this law, the following technical nomenclature, composed of ten principal groups, each one of them subdivided into various classes, shall be strictly adhered to, each of these comprising various heads, to which may be added others pertaining to the same class, whenever the presence of new matter to catalogue demands it, the rectifications and explanations that may be necessary to be made being reserved for the governing authorities of the Administration.

TECHNICAL NOMENCLATURE FOR THE CLASSIFICATION OF APPLICATIONS RELATING TO INDUSTRIAL PROPERTY

First group—Agriculture and alimentation

Class 1. Farming implements; agricultural machinery.
" 2. Manures, fertilizers, latrines, insecticides.
" 3. Agricultural and forestry exploitations; cattle-raising.
" 4. Horticulture, gardening, agriculture and sericulture.
" 5. Cereals, milling, bread making, pastes and starches.
" 6. Food substances and preserves; receptacles.
" 7. Sugars, coffees, chocolates, pastry, confectionery, syrups.
" 8. Vine culture, wines, musts, beers, vinegars.
" 9. Distilling, alcohols, spirits, liquors.
" 10. Gaseous beverages, artificial ice, refrigerators.

Second group—Mining and metallurgy

Class 1. Exploitation of mines, quarries, baths and mineral waters.
" 2. Combustibles, hydrocarbons and agglomerates.
" 3. Industrial furnaces and kilns, gasogenes.
" 4. Smelting and manufacture of iron and steel.
" 5. Forging, rolling and tempering of iron and steel.
" 6. Various metals, alloys, amalgams.
" 7. Wires, needles, pins, nails.
" 8. Cables, chains, metallic textures.
" 9. Sheet iron, tinplates and beaten tin.
" 10. Tools, implements, machines.

Third group—Motors and machines

Class 1. Motors for muscular force.
" 2. Air motors, windlasses.

" 3. Hydraulic motors.
" 4. Gas- and miscellaneous motors.
" 5. Steam motors.
" 6. Steam generators, boilers in general.
" 7. Accessories for motors and steam generators.
" 8. Organs of transmission and similar articles.
" 9. Compressing presses, filter-presses.
" 10. Miscellaneous machines and apparatus.

Fourth group—Chemical industries

Class 1. Illuminating gas and its accessories.
" 2. Oils and fats, candles, soaps, lye.
" 3. Wax chandlery, perfumery, essences.
" 4. Gums, resins, varnishes, caoutchoucs, japans, gutta-percha.
" 5. Colors, dyeing materials, inks, mordants, driers, enamels.
" 6. Albumen, gelatine, glues.
" 7. Hides and skins, tanned leather, leather straps, blacking.
" 8. Paper of all kind, card board.
" 9. Painted papers, cigarette paper.
" 10. Chemical, pharmaceutical and various products and processes.
" 11. Explosives for industrial uses.

Fifth group—Textiles and clothing

Class 1. Defibration, preparation, spinning and twisting.
" 2. Woven goods of all kinds.
" 3. Stiffening, bleaching, dyeing, printing.
" 4. Knitted goods, nets or webs.
" 5. Tulles, embroidery, laces, silk laces.
" 6. Sewing machines, braiding machines, etc.
" 7. Linen goods, corsets, dresses, hats.
" 8. Fancy trimming, haberdashery, gloves, ties.
" 9. Umbrellas, canes, fans, flowers and feathers.
" 10. Footwear, cordage, articles made of esparto grass, mats.

Sixth group—Liberal arts—Domestic economy and small industries

Class 1. Works of art, engraving and photography.
" 2. Typography, lithography and their derivatives.
" 3. Music, instruments and accessories.
" 4. Jewelry, hardware, and writing and drawing materials.
" 5. Furniture, upholstery, decorations, and material for teaching, gymnasia.

" 6. Culinary art, household furniture, kitchen utensils.
" 7. Cutlery, table articles, bottling, corks.
" 8. Basket making, Morocco leather, turning, cardboard and other boxes.
" 9. Tobacco, phosphorous, articles for smokers.
" 10. Toys, dolls, sundry industries.

Seventh group—Electricity and scientific instruments

Class 1. Products, accumulators, conductors, lightning-conductors.
" 2. Electric lighting, electric traction.
" 3. Telegraphy, telephony.
" 4. Various electric apparatus.
" 5. Watch making, instruments of precision.
" 6. Meters of all kinds, caligraphic apparatus.
" 7. Testing apparatus, pharmaceutical accessories.
" 8. Medical and surgical instruments and apparatus.
" 9. Physical, chemical, astronomical and geodetical instruments.
" 10. Weights and measures and instruments for weighing.

Eighth group—Constructions

Class 1. Materials: timber, lime, cements, asphalt, artificial stone.
" 2. Ceramics, bricks and tiles, pottery, earthenware and porcelain, glass.
" 3. Locks, carpentry, cabinet making, Venetian blinds.
" 4. Bridges, roofs, enclosures, pavements.
" 5. Foundations, dredging, sounding, perforating.
" 6. Construction, architectural works, scaffolding.
" 7. Heating, ventilation, lighting, sanitation.
" 8. Lifting apparatus, capstans, lathes, elevators.
" 9. Raising and conducting of water and other fluids.
" 10. Fire extinguishing materials, incombustible products.

Ninth group—Veterinary science, hunting, fishing and transportation

Class 1. Veterinary science, domestic animals.
" 2. Aviculture, hunting, utensils.
" 3. Pisciculture, fishing, apparatus.
" 4. Carriage making, velocipedes (bicycles).
" 5. Harness and accessories.
" 6. Railways, stationary and rolling material.
" 7. Sea and river navigation.
" 8. Aerial navigation, parachutes.
" 9. Life-saving, safety and swimming apparatus.
" 10. Transportation and funeral effects.

Tenth group—Military art

Class 1. Powders and explosives.
" 2. Cartridges and projectiles.
" 3. Portable and other fire arms.
" 4. Guns and carriages.
" 5. Batteries and armors.
" 6. Torpedoes and torpedo boats.
" 7. War vessels.
" 8. Sanitary material.
" 9. Field material.
" 10. Equipment, various articles.

TITLE IX

Indications of Origin

Art. 124. There is understood by indication of origin the designation of a geographical name, as a place of the manufacture, elaboration, or extraction, of a product.

The name of a place of production belongs collectively to all the producers that are established in it.

Art. 125. No one has a right to use the name of a place of manufacture in order to designate a natural or manufactured product coming from another place.

Art. 126. Falsity of indication of origin is not presumed when a geographical name is used for the denomination of a product, which, being already generic, indicates in commercial language the nature and name of origin of the product. This exception is not applicable to the products of the vine.

Art. 127. Foreign products with the marks of Spanish producers remain prohibited and will be seized upon their entrance at Spanish custom houses, whether the marks are completely new or constitute a modification or falsification of registered marks, there being reserved to the proprietors of the false marks the rights that the law recognizes.

Art. 128. Goods manufactured, either in Spain or in foreign countries, may bear, respectively, the name or mark of a foreign or Spanish merchant, on condition that the indications of the country of manufacture, or of production, are plainly visible and that the proper authorization for using them has been obtained.

Art. 129. Notwithstanding the provisions in the preceding article, the courts shall consider as a presumption of false indication of origin the fact that objects imported from a foreign country, not being Spanish-American, bear a Spanish mark or inscription in the Spanish language.

Art. 130. If the products imported from a foreign country

bear a name of origin that is identical with or similar to that of a place within Spanish territory, such name must be followed by the name of its nation.

TITLE X

Unfair Competition

Art. 131. There is understood by unfair competition all efforts to avail one's self unfairly of the advantages of an industrial or commercial reputation acquired through the efforts of another who may have his property protected by the present law.

Art. 132. There shall be considered as acts constituting unfair competition:

a) The imitation of the signs or show-bills of shop windows, façades, furniture, or anything else that may give rise to confusion with another establishment of the same class contiguous or very close by;

b) The imitation of the wrappers used by a competitive house in such a form that it may induce to confusion;

c) Selection, as a firm name, of a title in which is included the name of a locality known for the existence of a renowned establishment, with the object of illicitly availing one's self of its reputation;

d) Knowingly disseminating false assertions against a rival with the object of depriving him of his clientele;

e) Publishing advertisements, announcements or newspaper articles that tend to depreciate the quality of the products of a competitor;

f) Advertising one's self in a general way and contrary to the reality of the facts, as the depository of a national or foreign product;

g) The employment, without competent authorization, of indications or terms such as, "prepared according to the formula of" or "prepared according to the process of manufacture of" unless the formula or the process pertains to public domain.

TITLE XI

Falsifications and Infringements of Industrial Property

CHAPTER I

Falsification and Infringement of Patents of Invention, Marks, Designs and Trade Models

Art. 133. The falsification of . . . marks . . . will be punished in accordance with Art. 291 of the Penal Code.

Art. 134. . . . . .

They are infringers of marks . . . that, in order to preju-

dice the rights or interests of the legitimate possessor, use, make, or employ, the said registered marks . . . or others that may be confounded with them.

Accomplices are those that, having knowledge, contribute to the acts enumerated in the preceding paragraphs.

. . . . . .

ART. 136. There shall be punished with a fine of from 25 to 125 pesetas:

1) Those that use a mark . . . without having the corresponding certificate of ownership, and allowing it to be understood, by using the expression "registered" or any analogous word, that they have such certificate;

2) Those that, being legitimate proprietors of a mark, apply it to products different from those for which it was granted;

3) Those that, having varied the total or partial configuration of the mark, . . . use it with the expression of "registered" or other analogous word, without having effectively registered this variation;

4) Those that remove from merchandise the marks of the producer without the express consent of the latter in order to trade in such merchandise, although they do not apply said marks to other products.

Those committing second offences, these being understood to be those that have suffered punishment for the same offence within the last five years, shall be punished with a fine of from 125 to 250 pesetas.

In case of insolvency, the offender shall suffer substituent imprisonment in accordance with Art. 50 of the Penal Code.

ART. 137. There shall be punished with a fine of from 250 to 500 pesetas all that use prohibited marks.

CHAPTER II

IMITATION AND UNFAIR COMPETITION

ART. 138. Those that use a mark . . . in ways that may lead the consumer into mistake or error, confounding it with the true and legitimate, shall be punished in accordance with Art. 552 of the Penal Code.

Those that use a trade name or an industrial recompense in a manner that may lead the purchaser into error with regard to its legitimacy will be punished with a fine of from 25 to 125 pesetas.

ART. 139. In all the cases that constitute unfair competition, according to Art. 132, as well as in those of false indication of origin, the authors shall be punished with a fine of from 100 to 500 pesetas; accomplices, with that of 50 to 250; and con-

cealers, with that of 25 to 175, all these at the instance of the party interested.

CHAPTER III

Infringement of Trade Name and Industrial Recompenses

Art. 140. The following shall be punishable with a fine of from 25 to 125 pesetas, as an infringement of a trade name:

1) The use of a trade name as registered, when it is not legally so;

2) The designation of an establishment by means of a denomination that refers to another older one, whose name is registered; and

3) The false designation of an establishment as a branch of another, national or foreign, whose name is entered at the Registry.

Art. 141. Those that employ in bad faith a trade name that has been registered as the exclusive property of another, living in the same locality, shall be punished with a fine of from 50 to 250 pesetas.

Art. 142. There shall be punished with a fine of from 25 to 125 pesetas those that apply industrial recompenses that they may have obtained to products different from those for which they were granted;

With that of from 125 to 250 pesetas that use in the signs or showbills of their establishments advertisements, bills, letterheadings, etc., reproductions of medals and industrial recompenses to which they have no right.

Art. 143. There will be imposed a fine of from 250 to 500 pesetas upon those that shall use reproductions of medals and of recompenses alluding to exhibitions or competitions that have not taken place.

Art. 144. All the penalties mentioned in this Title shall be understood as being additional to indemnification for damages and injuries.

Art. 145. Civil and criminal actions referring to industrial property shall be tried before the ordinary Courts that may be competent to have jurisdiction in the matter.

Industrial juries shall be organized as soon as possible, there being conferred upon them the attributes necessary for their authority, and there being transferred to them the jurisdiction now conferred upon the Courts in the form that the law determines.

TITLE XII

Temporary Protection

Art. 146. Temporary protection is granted . . . to every

mark . . . that may figure in international exhibitions and those of an official character that are celebrated in Spain.

The conditions and terms of the said protection shall be:

a) For the term of six months, counting from the admission of the object in the exhibition, the said protection being without effect if, in the term indicated, the definitive registration of the . . . mark . . . is not solicited, in accordance with the prescriptions of this law.

b) With regard to the formalities for the grant of these certificates and their cost, the grant of the certificates of temporary protection shall be gratuitous and be effected by the Royal Commissioners of the Exhibitions, keeping a Register thereof and communicating them afterwards to the Ministry of Agriculture, Industry, Commerce and Public Works, in order that they may be published in the *Boletín Oficial de la Propiedad Industrial e Intelectual* and in the *Gaceta de Madrid.* The original Registers, at the termination of the exhibitions, shall be transmitted by the Royal Commissioners to the Ministry.

c) With regard to the rights of the proprietor, the publication or the employment, unauthorized by the originator, shall not be an obstacle to him or his representative demanding during the term of six months . . . the ownership of the mark . . . to which the first paragraph of this article refers, as well as effectuating the filing that will assure definitive protection in all the countries that constitute the International Union for the Protection of Industrial Property.

TITLE XIII

Jurisdiction in Matters of Industrial Property

Art. 147. Civil actions in matters of industrial property shall be instituted at the domicile of the defendant. If claim is directed at the same time against the grantee of the right to title relative to such property and one or more of his grantees or assigns, the competent Judge or Court will be that of the domicile of the grantee. If the claim is set up against two or more grantees or assigns, the competence of the Court shall be determined by the domicile of any one of them, at the election of the plaintiff.

In criminal actions and proceedings, competency is regulated by the provisions referring to legal procedure of this Ordinance.

Art. 148. Civil claims shall be adjusted by the rules prescribed by the Law of Civil Procedure according to their importance; criminal actions, by those that the Law of Criminal Procedure provides.

ART. 149. In all judicial actions that have for their object to declare the nullity or lapsing of . . . a mark . . . the Public Prosecutor shall be a party.

ART. 150. In the case of the preceding article, all those deriving rights from the assignee, according to the Registry of Industrial Property, must be summoned before the legal tribunal.

ART. 151. As soon as the nullity or lapsing is judicially declared of a . . . mark, . . . the court shall communicate the sentence that it has made executory to the Ministry in order that it may take cognizance thereof, and the nullity or lapsing shall be published in the *Boletín* in the same terms as and at the proper time that this law orders for the publication of . . . marks . . .

TITLE XIV

TRANSITORY PROVISIONS

. . . . . .

ART. 154. Manufacturers, merchants, agriculturalists and others, whether individual or collectively, that may have made use of a mark, shall have preferential right to solicit, within a term of six months, counting from the date of the promulgation of this law, its registration, subjecting themselves to the conditions established therein.

ART. 155. Applications for marks that may be pending and those that may have already been published in the *Boletín,* awaiting the expiration of the legal terms for their decision, shall be decided in conformity with the prescriptions of this law, the parties interested subjecting themselves, so far as relates to the duration of the registration and the payment of taxes, to the provisions of the same.

ART. 156. Certificates of marks issued in accordance with the Royal Decree of November 28, 1850, shall be valid and shall have all their legal efficacy for the effects of Art. 32 of this law.

Nevertheless, and with the object of unifying the entries in the official Registers, all those interested parties to whom original certificates have been issued for more than twenty years, must make application within the necessary term of six months, and the remainder must apply for renewal as the term referred to expires.

ART. 157. Renewals shall remain subject in all things to the provisions of this law.

ART. 158. Persons or Companies comprised in the two preceding articles that allow the terms indicated therein to lapse without applying for the certificate for their marks, shall be

understood as renouncing them, and accordingly they may be granted to whoever solicits them in conformity with this law.

FINAL PROVISION

ART. 159. Such provisions as may have been promulgated or dictated in the matter of industrial property are repealed.

ADDITIONAL PROVISIONS

1. The Minister of Agriculture, Industry, Commerce and Public Works, is authorized to publish regulations or dictate any provisions necessary for the fulfillment of this law.

2. Within the term of three years, the Registry of Industrial Property shall prepare a catalogue of all the . . . marks . . ., trade names and industrial recompenses in force. This catalogue shall be in duplicate, and one of its copies shall be at the disposition of the public, for consultation. Annually there shall be removed the papers containing the registrations that may have lapsed, and there shall be added those corresponding to the new registrations.

Therefore:

We command to all Courts, Justices, Chiefs, Governors and other authorities, civil as well as military and ecclesiastical, of any class and dignity, that they guard and cause others to guard, comply with, and execute, the present law in all its parts.

STRAITS SETTLEMENTS

This colony has no trade mark law.

Merchandise Marks Ordinance, 1888, No. 3, substantially like Great Britain Merchandise Marks Ordinance, which see.

SURINAM (DUTCH GUIANA)

The trade mark law of Surinam is the same as that of Curação, which see.

SWEDEN

LAW OF JULY 5, 1884, AS AMENDED MARCH 5, 1897, JUNE 16, 1905, AND AUGUST 7, 1914.

SECTION 1. Whoever here in the kingdom carries on a manufacturing or artisan's trade, farming, mining, commerce or other kind of trade, may, in addition to possessing the right of using as a trade mark his name or the name of his firm or the name of real estate owned by him, obtain by registration in accordance with the provisions of this law the exclusive right of employing a special trade mark to distinguish his goods from others in the public market. Such right shall embrace all kinds of goods, when at the registration it has not been confined to certain kinds of goods.

The trade mark shall be applied on the article itself, or on the vessel or wrapper (packing) in which the same is kept.

SEC. 2. The register of trade marks for the whole kingdom shall be kept in Stockholm by an authority appointed for such purpose.

SEC. 3. Whoever desires to have a trade mark registered shall deposit with, or send by prepaid letter to, the registering authority an application in writing containing a clear description of the mark together with full particulars concerning the name or firm, profession, and postal address of the applicant, as also, when the right to a trade mark shall include only certain kinds of goods, an account of the same.

The application shall be accompanied by:

1) An illustration of the mark on strong paper in three copies of at the most ten cm. in height and fifteen cm. in breadth;

2) Two stamps (blocks) of the same size as the illustrations, suitable for printing the trade mark;

3) Forty kroner, the amount of the fee for the registration and advertisement of the same.

The registering authority shall without delay hand the applicant, or, if full address has been given, send by post, a written notice of the receipt of the application and of the day and time of day when the same was received; one of the copies of the trade mark deposited shall be attached to the said notice.

SEC. 4. A trade mark may not be registered:

1) if it consists only of figures, letters or words which are not distinguished by such a characteristic form that the mark can be considered as a figure mark; nevertheless registration may not be refused if the mark consist of words which can be

considered as a specially invented name for certain kinds of goods stated in the application in accordance with Sec. 3, which is not intended to indicate the origin, nature, object, quantity or price of the article;

2) if any other name or firm than that of the applicant, or the name of real estate of another, have been included therein without authority;

3) if it contain public coat of arms or stamps;

4) if it contain representation that may cause offence;

5) if it be altogether identical with a trade mark already registered, or duly presented for registration, on behalf of another, or present such resemblance to a similar mark that, notwithstanding differences in certain parts, the marks in their entirety can easily be confounded; nevertheless registration may not be refused if the resemblance be owing to such characteristics as are concerned under Sec. 7, or if both the marks concern different kinds of goods.

Sec. 5. If the registration be refused, information with regard to such decision, together with the grounds therefor, shall be communicated to the applicant in writing in the manner prescribed under Sec. 3 for the cases considered therein.

In the event of the applicant being dissatisfied with the decision, he may appeal to the King before twelve o'clock, noon, on the sixtieth day after the day of the decision; otherwise he forfeits his right to appeal.

Sec. 6. Should the registration not meet with any objection, the mark shall be entered in the register and advertisement thereof inserted without delay in the public newspapers and in a registration journal published at the expenses of the public.

Sec. 7. If a trade mark which has been registered on behalf of some one contain figures, letters or words that according to Sec. 4 can not alone of themselves be registered as a trade mark, or if it only or in part consist of such sign or mark as is generally used in a certain trade, the registration does not constitute any hinderance for another to use the same characteristics as a trade mark or part of a trade mark.

Sec. 8. The right to a registered trade mark may not be transferred otherwise than together with the business for which it is used.

Should a business be transferred to another owner, the right to a registered trade mark used for the business passes over from the transferrer to the new owner, when agreement is not made that the right to the mark may be retained by the former, or that both may use the mark for different kinds of goods.

SEC. 9. The protection for a registered trade mark ceases when application for renewal has not been made, for the first time, within ten years from the day of registration, and subsequently within ten years from the last renewal.

If any one be desirous of renewing the registration, he shall deposit or send in as prescribed in Sec. 3, a written application in this respect, enclosing one copy of such illustration as is there prescribed, together with a registration fee of 10 Kronor. Should the mark have been registered for another than the one applying for renewal, the right of the applicant to the mark shall also be confirmed.

The renewal shall immediately be entered in the register and a certificate thereof delivered to the applicant in a manner similar to that prescribed under Sec. 3 concerning notices of receipt mentioned therein.

If the registering authority find that anything of what has here been prescribed has been neglected the said authority shall refuse the renewal. With reference to the communication of the decision and the appeal relating to the same, what is prescribed for the corresponding case in Sec. 5 shall here be applicable.

SEC. 10. If the King find upon notification that a trade mark in consequence of Sec. 4, pars. 3 or 4, should not have been registered the same shall be removed from the register.

Should registration of a trade mark which consists only of such a sign or mark as is commonly used in certain trades, have been effected, each one carrying on such trade has the right of demanding the revocation of the registration. In this event, as also when any one is of opinion that the registration of a trade mark is detrimental to him, action concerning the revocation of the registration may be brought before the court.

SEC. 11. When registration has been revoked, or protection for a registered trade mark has ceased, or when the one entitled to the marks so demands, the mark shall be removed from the register and advertisement thereof inserted in the newspapers mentioned under Sec. 6.

If in consequence of the decision of the King a trade mark be removed from the register in accordance with Sec. 10 the registering authority shall also inform the one for whom the registration has been effected.

SEC. 12. Whoever on goods which are kept for sale or on vessels or wrappers containing the same places without authority the name or firm of another or the name of real estate of another or a trade mark which he knows to be registered on behalf of another, as also whoever keeps goods for sale, which

to his knowledge are, according to what is stated above, unlawfully marked, shall be liable to a fine of from twenty to two thousand Kronor inclusively, or, if a grave detriment has resulted from the act, or if the act be made under specially aggravating circumstances, to imprisonment from one month to two years inclusively, as well as to the payment of all damages.

At the expense of the one condemned the marks unlawfully placed shall be expunged or if the expunction cannot otherwise be effected, the goods or the vessels or the wrappers containing the same shall be destroyed, providing they are still in the possession, or in any other way at the disposal, of the one condemned.

Violation of this section may not be prosecuted by the public prosecutor unless the offence be brought before the court by the injured party.

Sec. 13. What is prescribed in Sec. 12 shall apply, even if the name or firm of another or the name of real estate belonging to another or a registered trade mark of another has not been reproduced unaltered, providing the alterations are not so great that, in spite of differences in certain parts, the names or the marks can as a whole be easily confounded.

Sec. 14. What is prescribed in this law does not involve any alteration in the provisions of the Statutes in force concerning certain iron articles which shall be provided with a stamp. Such stamp shall, for the kinds of articles for which it has been approved, have the validity of a trade mark according to this law, and the stamp ought consequently to be adapted to the provisions of the said law, which in other respects too shall be observed as regards the registration of the stamp and the effect of such registration. Registration of iron stamps shall be renewed by the registering authority without any special application.

Sec. 15. The stamps mentioned in the preceding section which have been approved of in due order and are valid when this law shall come into force, shall without special application be entered in the register of trade marks by the registering authority who shall also insert advertisement thereof in the trade marks journal.

If a tradesman lawfully use a special mark when this law shall come into force in other case than that aimed at by the foregoing section, and have within six months from the date when the law came into force, applied for registration of the mark in the manner prescribed under Sec. 3, no one can by previous registration obtain right to the same mark, or to a mark which so resembles the same that it can easily be con-

founded therewith. Should two or more tradesmen have registered in this way trade marks for the same kind of goods, which present such resemblance to each other as was just mentioned, the one who has first published the mark as his in accordance with the Royal Ordinance of June 13, 1862, has the right of priority to use it for the kind of goods for which it was used at the time when this law was issued, providing no one of the others prove that it originally has been a mark used by him which the former has adopted.

In the cases mentioned in this section, the mark shall, if it has been used prior to the issuing of the law, be registered in the form in which it has been used, independent of the provisions in Sec. 4; and, notwithstanding that the mark only or mainly consists of figures, letters or words which are not distinguished by a characteristic form, no one shall be entitled for the kinds of goods for which it was used prior to the registration, to get registered or otherwise to use the same mark or a mark which so resembles the same that it can easily be confounded therewith. Such registration may not, however, with the exception of that of iron stamps or shipment marks on timber, be a hindrance for anyone, to use his initials or the initials of his firm.

Sec. 16. The king may upon agreement with a foreign state and under the presumption of reciprocity, decree that protection for a trade mark according to this law may be granted also to the one who carries on such trade outside the Kingdom as is mentioned under Sec. 1; and also to an association established without the country, in order to safeguard the interests of merchants, although the association does not exploit the industry hereinbefore mentioned. The provisions of the law shall be, in consequence, applicable in this case, through the observance of the special rules, following, in whatever concerns the deposit of marks:

1) The application for registration shall be accompanied by a certificate that the applicant has fulfilled the conditions required for the protection of the trade mark in the foreign state;

2) The one for whom the registration shall come into force shall have an attorney residing within the kingdom who here may answer on his behalf in all cases concerning the trade mark; and consequently he shall, when the application is made, and subsequently upon changes of attorneys, state the name and address of the attorney at the risk that, if this said provision should not be observed, the judge may in such cases upon notification appoint with legal force such an attorney;

3) The trade mark shall not be protected to a greater extent or for a longer period than in the foreign state.

With reference to a trade mark registered in a state which makes corresponding concessions for Swedish trade marks, the King may, besides, prescribe as follows:

4) The trade mark may, providing it be not contrary to morality or public order, be registered in the form in which it is protected in the foreign state;

5) If any one has applied for the registration of a trade mark here in the kingdom before the expiration of a certain time, which can be determined to be a period not exceeding four months from the date when he made application for registration of the same trade mark in the foreign state, or not exceeding three months from the date when the proper authorities there published notice that such registration had been granted, then the application made here in the kingdom may be regarded in relation to other applications as if it were made simultaneously with the application in the foreign state;

6) If the registration be refused on the provisions of Sec. 4, par. 5, and the applicant, after having taken proceedings against the one holding the right of using the mark previously applied for or registered, bring proof that the said mark is a mark originally used by the applicant, which another has adopted, the court may declare the applicant entitled to obtain registration with the exclusive right of using the mark for the kind of goods for which he used the mark at the time when the mutual protection came into force. Proceedings in this respect may not be taken later than six months from the aforesaid time;

7) A trade mark which has been duly registered in the foreign state before the mutual protection came into force, and which only or mainly consists of figures, letters or words which according to Sec. 4 can not alone be registered as a trade mark, shall, when it is protected in the foreign state, enjoy the special protection here in the kingdom, subsequent to registration, that others may not use the same figures, letters or words as a trade mark for the same kind of goods, unless they have used them before the mutual protection came into force. The registration of such trade marks with the exception of iron stamps and shipment marks on timbers, may not, however, be a hindrance for any one to use the initials of his name or his firm as a trade mark.

Sec. 17. More detailed provisions concerning the Register of Trade Marks, the publishing of the Trade Marks Journal, and the time and manner for the publishing of the Ordinances mentioned in this law, will be issued by the King.

SEC. 18. A conflict concerning a trade mark shall be brought before the court, within the district of which the defendant is resident, or, when the question concerns a mark of a foreigner, to the Law Court of Stockholm.

SEC. 19. Fines imposed in accordance with this law go to the Crown; in the absence of means to fully cover the fines, other penalty shall be substituted, in accordance with the Common Penal Code.

SEC. 20. This law shall come into force on January 1, 1885.

All persons concerned, etc.

SWITZERLAND

LAW OF SEPTEMBER 26, 1890

I. Marks of Manufacture and of Commerce

Article 1. There shall be considered as marks of manufacture and of commerce:

1. Commercial names;

2. Signs applied to industrial and agricultural products or merchandise or upon their containers for the purpose of distinguishing them or of evidencing their origin.

Art. 2. Swiss commercial names employed as marks shall be fully protected by law on the fulfillment of the formalities prescribed for the recognition of these names (*Code Fédéral des Obligations,* Art. 859 and ff.*).

Art. 3. Marks defined in Art. 1, No. 2, shall be subject to the dispositions of Articles 4 to 11 following.

Public arms and all other signs susceptible of being considered as the property of a State or public property, that figure in the marks of private individuals, may not be the subject matter of legal protection.

It is prohibited to have appear in a mark of manufacture any indication of a nature to offend good morals.

Art. 4. The use of a mark cannot be claimed at law until after the fulfillment of the formalities of deposit and registration prescribed in Arts. 12 to 15 following.

Art. 5. Until proof to the contrary there shall be presumption that the first depositor of a mark is also the real owner thereof.

Art. 6. A mark whose deposit is effected must be distinguished in its essential characteristics from those that are already found registered.

The reproduction of certain figures of a deposited mark does not exclude the new mark from the rights resulting from registration, on condition that, in its ensemble, it differs therefrom sufficiently to not easily give occasion to confusion.

The disposition of the first paragraph of the present article shall not be applied to marks intended for products or merchandise of a nature totally different from those that the deposited mark concerns.

Art. 7. There shall be authorized to have registered their marks:

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* The *Code Fédéral des Obligations,* Secs. 859-876, refers to commercial matriculation.

1) Industrials or other producers having the seat of their production in Switzerland and merchants who there possess a regularly established commercial house;

2) Industrials, producers and merchants established in States that accord reciprocity of treatment to the Swiss, provided that they furnish proof that their marks or commercial names are protected at the place of their establishment;

3) Associations of industrials, of producers and of merchants that satisfy the conditions indicated in Nos. 1 and 2 above and who enjoy civil capacity, as well as public administration.

ART. 8. The duration of protection is fixed at twenty years; but the owner may assure himself the continuation thereof for a new period or like duration by renewing the deposit during the course of the last year and by paying a fee of twenty francs.

The Federal Office of Intellectual Property shall notify the owner of the early expiration of the term without, however, being obliged so to do. The mark shall be cancelled if the renewal is not petitioned within six months.

ART. 9. He who has not made use of his mark for three consecutive years shall be deprived of protection.

ART. 10. The cancelled mark may not be validly deposited by a third party for the same products or merchandise until after the expiration of five years counting from the cancellation.

ART. 11. The mark may be assigned only with the enterprise the products of which it serves to distinguish.

As regards third parties the assignment produces its effects counting from its publication only. (Art. 16.)

ART. 12. The deposit of a mark shall be effected at the Federal Office of Intellectual Property.

The applicant shall include with his declaration, which must be signed and indicate his address and his profession:

a) The mark or its exact reproduction, in duplicate, with the designation of the goods or merchandise for which it is intended and casual observations;

b) A *cliché* (electrotype) of the mark for typographic reproduction;

c) The fixed registration fee of twenty francs.

The deposit and the registration, in a single language, of a mark, accompanied by a text in divers languages, suffices to assure protection, provided that the general impression produced by the mark be not altered through the employment of different texts.

ART. 13. The Office shall keep a register of regularly deposited marks.

Registration takes place on the responsibility and at the risk of the applicant. However, if the Office establishes that a mark is not new in its essential characteristics, it shall so inform the applicant confidentially, which latter may maintain, modify or abandon his application.

ART. 14. Under reservation of recourse to the superior administrative authority, the Office must refuse registration:

1) When the conditions provided for in Arts. 7 and 12 are lacking;

2) When the mark comprises, as an essential element, public arms or any other figure that must be considered as public property, or when it contains indications of a nature to offend good morals; the competent Federal Department may on its own initiative order the cancellation of such a mark registered by mistake;

3) When several persons concurrently apply for the registration of the same mark, up to the moment at which one of them shall produce a renunciation, duly certified, from his applicant rivals or a decision given *res adjudicata;*

4) When the mark bears an evidently false indication of origin or a fictitious, imitation, or counterfeit, commercial title, or indication of distinctions of merit the legitimacy whereof the applicant does not establish.

ART. 15. The Office shall give official acknowledgment to the applicant for registration or renewal by returning to him a duplicate of the copy deposited (Art. 12, letter a), upon which it shall endorse the day and hour of the deposit and of the registration.

Within fourteen days from registration the mark shall be published, under the supervision of the Office and without costs, in the official journal of commerce or such other federal sheet designated for this purpose.

ART. 16. The assignment of the mark (Art. 11) shall be noted in the Register, on the production of a legalized instrument.

It shall be made public in the same manner as the registration.

The annotation of assignment shall be subject to a fee of twenty francs.

Modifications made in commercial names that form an integral part of marks deposited shall be noted in the Register, on receipt of notice that must be made thereof by those interested, and published in the official organ, with indication of the number of the mark to which the modification applies. There shall be collected for this procedure a fee of ten francs.

ART. 17. Any person has the right to ask information from the Office or for extracts from the Register, as well also to take cognizance of applications for deposit and of the accompanying papers. The Office may, however, deliver the same out of its custody only on judicial order.

The Federal Council shall fix a moderate fee for such communications and information.

II. INDICATIONS OF ORIGIN

ART. 18. An indication of origin consists in the name of the city, of the locality, of the region, or of the country, that gives its renown to a product.

The use of this name belongs to each manufacturer or producer of such city, locality, region, or country, as also to the purchaser of these goods.

It is prohibited to supply a product with an indication of origin that is not real.

ART. 19. Persons inhabiting a place reputed for the manufacture or the production of certain merchandise, that trade in similar goods of other origin, are bound to take necessary measures to the end that the affixing of their mark or commercial name may not induce the public to error as to the origin of such goods.

ART. 20. There will be no false indication of origin in the sense of the present law:

1) When the name of a locality has been affixed to a product manufactured elsewhere, but for the account of a manufacturer having his principal industrial establishment in the locality indicated as the place of manufacture, provided, however, that the indication of origin be accompanied by the commercial name of the manufacturer or, in default of sufficient space, by his deposited trade mark;

2) When it is a question of the denomination of a product by a name of place or of country, that, become generic, indicates, in commercial language, the nature and not the origin of the product.

III. MENTIONS OF INDUSTRIAL RECOMPENSES

ART. 21. The right of providing a product or its wrapper with the mention of medals, diplomas, recompenses and distinctions of honor, of whatever character, awarded in expositions or competitions, in Switzerland or abroad, shall belong exclusively to persons or companies that have received them.

The same shall hold for mentions, recompenses, distinctions or awards accorded by public administrations, learned bodies or scientific societies.

ART. 22. He who shall have made use of the distinctions

mentioned in the preceding article must indicate the date and nature thereof, as well as the expositions or competitions in which he has obtained them. If it is a question of a distinction received in a collective exposition, he must make mention thereof.

Art. 23. It is prohibited to affix mentions of industrial recompenses upon products bearing no relation to those that have obtained the distinction.

IV. Penal Provisions

Art. 24. He shall be prosecuted civilly or criminally, in accordance with the following provisions:

a) Who shall have counterfeited the mark of another or shall have imitated it in such way as to induce the public to error;

b) Who shall have usurped the mark of another for his own product or merchandise;

c) Who shall have sold, placed on sale or in circulation, goods or merchandise bearing a mark that he knew to be counterfeit, an imitation or improperly affixed;

d) Who shall have knowingly co-operated in the above infractions or shall knowingly have aided or facilitated the execution thereof;

e) Who shall refuse to declare the origin of goods or merchandise in his possession bearing counterfeit, imitation or improperly affixed marks;

f) Who shall have contravened the dispositions of Arts. 18, third paragraph, 19, 20, number 1, 21, and 23 of the present law.

Art. 25. The above enumerated infractions shall be punishable with a fine of from 30 to 2000 francs, or by imprisonment of from three days to one year, or both.

The penalty may be increased to double in case of repe tition.

These penalties shall not be applicable when the contravention shall have been committed through simple mistake, imprudence or negligence. Civil indemnity shall remain reserved.

Art. 26. Whoever shall have improperly inscribed upon his commercial marks or papers a mention tending to make it appear that his mark has been registered;

Whoever, upon his signs, announcements, prospectuses, invoices, letters or commercial papers, shall make use improperly of indications of origin or of mentions of industrial recompenses, or shall omit the indications prescribed in Art. 22;

Shall be punished, *ex officio,* or upon complaint, by a fine

of from 30 to 500 francs or by imprisonment of from 3 days to 3 months.

The penalty may be increased to not more than double in case of repetition.

ART. 27. Civil or criminal actions may be brought:

1) In whatever concerns marks:

by the purchaser deceived or the owner of the mark;

2) In whatever concerns indication of origin:

a) by any manufacturer, producer or dealer injured in his interests and established in the city, locality, region or country, falsely indicated; by a collectivity, enjoying civil capacity, by its manufacturers, producers or dealers;

b) by any purchaser deceived by means of a false indication of origin;

3) In whatever concerns industrial recompenses:

a) by any manufacturer, producer or dealer, carrying on an industry or trade in products similar to that which has been falsely provided with an illegal mention.

ART. 28. Criminal action shall be brought either at the domicile of the offender, or at the place in which the offense has been committed. Criminal prosecutions may not be cumulative for the same offense.

The Cantonal Government shall be bound to give course, without expense to the Confederation, to complaints that shall be addressed to it by the Federal Council.

Civil or criminal prosecutions may not be lodged for acts committed prior to the registration of the mark.

Action shall be brought within two years, counting from the last act of contravention.

ART. 29. The Cantons shall designate the Tribunal charged with judging, in single instance, civil cases to which the application of the present law gives occasion.

Judgments may be referred to the Federal Tribunal, whatever be the amount in litigation.

ART. 30. Action against the depositor of a mark domiciled outside of Switzerland may be brought before the Tribunal in the jurisdiction in which is located the seat of the Federal Office, unless the depositor shall have made election of domicile in Switzerland and shall have given notice thereof to the Office.

ART. 31. The Tribunal may order the necessary conservation measures, in particular the sequestration of the instruments and utensils that have served for the infringement, as well as of the products and merchandise upon which the mark in litigation is found affixed.

ART. 32. It may likewise order the confiscation of the

object seized, in order to assess the value thereof as to damages and injuries and indemnities, as also the publication of the judgment in one or several journals at the cost of the condemned party.

It shall order, even in case of acquittal, the destruction of the illicit marks and, the case arising, the goods, wrappers or containers, provided with these marks, as well as the instruments and utensils that have served for the infringement.

ART. 33. The proceeds of the indemnities shall be placed in the Cantonal Treasury.

The judgment shall announce that, in default of payment, the indemnity shall be, legally, changed to imprisonment, at the rate of one day for each five francs of indemnity.

ART. 34. Proceedings shall be taken by the Office, on presentation of the judgment passed into force as a *res adjudicata* for the cancellation of marks unduly registered or avoided.

Cancellation shall be made public in conformity with Art. 16, second paragraph.

V. FINAL PROVISIONS

ART. 35. The Federal Council may guarantee provisional protection of two years at the most as to marks applied to products or merchandise shown in Switzerland in industrial or agricultural expositions and emanating from States with which there exists no convention on the subject.

ART. 36. The dispositions of the present law concerning indications of origin and mentions of industrial recompenses shall not be applicable, even when their marks would be protected in accordance with Art. 7, to the profit of persons not domiciled in Switzerland, being subjects of States that do not grant reciprocity of treatment in this matter.

ART. 37. The Federal Council is charged with the issuance of rules and ordinances necessary for the execution of the present law.

ART. 38. The present law abrogates the Federal Law of December 19, 1879, concerning the protection of marks of manufacture and of commerce.

ART. 39. The Federal Council is charged, in conformity with the provisions of the law of June 17, 1874, concerning the popular vote on Federal laws and orders, with publishing the present law and fixing the time at which it shall become effective.

SYRIA AND LEBANON

LAW [NO. 865] OF MAY 27, 1921

General Gouraud, High Commissioner of the French Republic in Syria and Lebanon.

Having seen the decrees of October 8, 1919, and November 23, 1920;

Having seen the Ottoman law of May 11, 1888 (23 Chaban 1305), regulating the protection of marks of manufacture and of commerce;

Having seen Order No. 769 of March 19, 1921, assuring to exhibitors during the term of the Fair at Beirut temporary protection of their rights of industrial property;

Considering that it is indispensable to guarantee in a permanent manner to manufacturers and merchants the full exercise of their rights of ownership in the marks of manufacture or of commerce adopted by them for the qualification of their products or the indication of their place of origin or of production;

At the instance of the Chief of the Economic Services of the High Commissariat, and after the assent of the Legislative Counselor, of the Financial Counselor, and of the Judicial Counselor,

Orders:

ARTICLE 1. There shall be considered as marks of manufacture and of commerce: names, denominations, seals, stamps, emblems, letters, ciphers, wrappers, dressings (*habillage*), or other distinctive signs; that is to say, any emblem or stamp serving to distinguish the locality or the factory from which originate the articles or products, the names and denominations of factories, of manufacturers and of those that trade in these products.

ART. 2. The employment or the adoption of marks of manufacture or of commerce is optional. However, in case of need, they shall become obligatory for certain products, following an order from the authorities. It is formally understood that emblems adopted as marks must not be emblems seditious or contrary to public morality and to good custom. Emblems of this nature, accordingly, may not be adopted as marks.

ART. 3. No person may claim the exclusive ownership of a mark and, in consequence, bring action against counterfeiters unless he has deposited two specimens of the design of this

mark at the Office for the Protection of Industrial and Artistic Property (O. P. P. I. A.) and with the office of the Clerk of the Court of Appeals.

The Commercial Office at Beirut under the High Commissariat shall fulfill the official functions for the protection of industrial and artistic property, in Syria and in Lebanon.

ART. 4. A mark deposited officially in conformity with the terms of Art. 3, above, shall be effective only for fifteen years.

However, the right of exclusive ownership of a mark may be renewed by means of a new deposit with specimens or with a design of the mark every fifteen years.

The right of ownership of a mark may be assigned by its owner to third parties with the authorization of the High Commissioner, after advice by the Chief of Economic Services of the High Commissariat; likewise, in case of the decease of the owner, the right shall devolve upon his heirs.

ART. 5. There shall be collected, by way of miscellaneous receipts of the General Budget of Syria and Lebanon, a fee of from five to ten pounds, Syrian, for the preparation of the certificate to be sent to the owner, showing the deposit of the specimens of the mark.

The amount of this fee shall be fixed as follows:

1) Registration of a mark composed of a single emblem: a maximum of ten pounds, Syrian, shall be collected;

2) Registration of a mark composed of several emblems:

a) If a single certificate is demanded by the depositor for the total of the specimens deposited:

First specimen: fee collected, ten pounds, Syrian;

Second specimen: fee collected, eight pounds, Syrian;

Third specimen: fee collected, five pounds, Syrian;

Additional specimens: fee collected, five pounds, Syrian;

b) If a special certificate is demanded by the depositor for each of the specimens deposited;

The maximum fee of ten pounds, Syrian, shall be collected for each specimen deposited.

The payment of these sums shall be effected at the Cashier's Office of the Treasurer-General of the High Commissariat at Beirut or at those of the responsible stewards with the local governments, upon the production of a form of receipt drawn up by the Office for the Protection of Industrial and Artistic Property, and viséd by the Directorate of Finances of the High Commissariat. The certificate of deposit shall be delivered only upon presentation of the receipt delivered by the responsible party.

ART. 6. Foreigners that exercise in Syria and Lebanon an industry or business shall likewise have the right to adopt a mark for the products of their establishments and the articles of their commerce, on condition of subjecting themselves to the terms of the present regulation; in this case they shall enjoy the advantages and guarantees assured by the said regulation.

Actions relative to marks shall be governed by the laws and practices of ordinary procedure.

ART. 7. Every person that shall desire to deposit his mark, such as this is provided for in Art. 3, shall have to present two specimens thereof if this mark is affixable by marking impress or stamp. In case the mark shall consist of a different object, two typographical designs exactly in conformity with the original and accompanied by all necessary indications and descriptions shall be deposited in the manner above indicated with the Office for the Protection of Industrial and Artistic Property. These specimens or designs must bear the seal or the signature of the depositor.

The depositor may be represented by an attorney invested with a power of attorney in good and due form. Mention of the power of attorney shall be endorsed upon the act of deposit. This attorney shall, as is above explained, affix his signature or his seal to the specimens or designs deposited.

ART. 8. Under responsibility of the Director of the Office for the Protection of Industrial and Artistic Property the typographical specimens or designs of the mark shall be pasted upon a sheet of the Register kept for this purpose. There shall likewise be entered in this Register:

1) The date of the deposit;

2) The name of the owner of the mark;

3) The calling and the domicile of the owner of the mark;

4) Indication of the nature of the product or of the article for which the mark is intended;

5) The serial number; and

6) The names, profession and domicile of the attorney or proxy in case the owner shall be represented, as well as the dates, places of execution, registration, etc., of the power of attorney authorizing this attorney or proxy.

These mentions shall be likewise signed and sealed by the owner of the mark or his attorney.

The second specimen preserved at the Office of the Clerk of the Court of Appeals shall be registered and signed in accordance with the same formalities.

ART. 9. The formalities provided for in the preceding articles once fulfilled, the Director of the Office for the Protection

of Industrial and Artistic Property shall deliver a provisional certificate of deposit.

ART. 10. Within a term of twenty days, dating from the issuance of the provisional certificate, the definitive certificate of deposit, prepared and signed by the Director of the Office for the Protection of Industrial and Artistic Property shall be transmitted to the Chief Clerk of the Court of Appeals, provided with the visé of this latter and returned to the Office for the Protection of Industrial and Artistic Property, which shall deliver it to the party interested—owner or attorney—on delivery of the provisional certificate.

ART. 11. Outside of cases in which competence is determined by the Capitular Laws, civil actions relative to marks shall be lodged before the tribunals of first instance and shall there be adjudged as summary matters. Correctional actions relative thereto shall likewise be adjudged by the said tribunals.

If, in case of action brought correctionally, the accused shall raise questions relative to the ownership of the mark, the correctional section of the tribunal hearing the principal action shall decide likewise as to the exception.

ART. 12. The owner of a mark may institute proceedings through the tribunal as to the detailed description of the nature, of the kind and of the quantity of goods and articles that he claims to have been marked to his prejudice and in contravention of the disposition of the present regulation; he may likewise, should there be occasion, have them seized by virtue of an order of the tribunal.

The order shall be issued on demand of the petitioner and on presentation, by him, of the certificate of deposit evidencing the deposit of his mark. The tribunal shall name, should there be occasion, an expert to aid the judicial personnel appointed for this purpose.

When the seizure of goods is petitioned, the tribunal may, before ordering this seizure, require from the owner of the mark a bond, if it so deems necessary.

There shall be communicated to the holder of the goods and articles described and seized a copy of the order of the tribunal and of the act evidencing the deposit of the bond, if it has been required. In case of defect in the above indicated formalities, that is to say, in the case in which the said copy shall not be communicated, the formalities fulfilled shall be considered as null and void, and the contravening official shall be amenable to damages and injuries.

ART. 13. In default by the petitioner of bringing action within the term of fifteen days, by adding to this term one day

for each six hours of distance between the locality in which are found the goods inventoried and seized and the domicile of the defendant, the description or the seizure of the goods shall be null and void, without, however, entailing prejudice to an action for damages and injuries which may be brought.

ART. 14. They shall be punished by a fine of from five Syrian pounds to one hundred Syrian pounds, or by imprisonment of from one month to six months, or by the two penalties at the same time, in accordance with the degree of gravity of the crime:

1) Who have counterfeited a mark whose model or facsimile is found deposited in accordance with the present regulations, or who have made use of a counterfeit mark;

2) Who have fraudulently affixed to their products or their articles of commerce a mark belonging to another;

3) Who have knowingly sold or placed on sale one or several kinds of products or articles bearing a counterfeit or fraudulently affixed mark.

ART. 15. They shall be punished by a fine of from five Syrian pounds to sixty Syrian pounds, or by imprisonment of from one week to two months, or by these two penalties at the same time:

1) Who have fraudulently altered a mark or have made use of a fraudulently altered mark;

2) Who have affixed genuine marks to a class of product or article with the manifest intention of deceiving the purchaser regarding the nature of the product;

3) Who have knowingly sold or placed on sale goods bearing these marks.

ART. 16. They shall be punished by a fine of from two Syrian pounds to twenty Syrian pounds, or by imprisonment of from twenty-four hours to one week, or by these two penalties at the same time, who have not affixed said mark to their products or articles, for which the mark has been declared obligatory, such as is provided for in Art. 2, and who shall have sold or placed on sale goods not bearing the same.

ART. 17. In the case in which an individual shall be summoned by reason of several crimes determined in the present regulations, he shall be amenable only to the penalty prevailing for the gravest crime.

ART. 18. In case of repetition, the penalty shall be doubled at the most. Any individual shall be considered a second offender who, after having been punished for one of the above specified crimes, shall commit one of these crimes within five

years, counting from the date of the first conviction.

ART. 19. Confiscation of the products and articles whose mark shall be recognized as contrary to the dispositions of Arts. 14 and 15, as well as of the instruments and utensils that have specially served for the making of this mark, may be pronounced by the tribunal, even in case of non-condemnation of the accused.

The tribunal may order that articles bearing a counterfeit mark belonging to another, and confiscated, as well as the counterfeit mark, shall be delivered to the owner of the genuine mark.

The value of these articles may, if necessary, be calculated in the amount of the damages and injuries. Any mark recognized as contrary to the provisions of Arts. 14 and 15 shall be destroyed in every case.

ART. 20. Those that have knowingly sold or placed on sale products not bearing a mark declared obligatory for this class of products shall be amenable to the penalty provided for by Art. 14, without prejudice to the obligation of affixing upon these articles the marks declared obligatory.

In case of repetition within a lapse of time of five years, counting from the date of conviction for a crime of this nature, the Court may order the confiscation of the products and articles.

The same penalties against those who have affixed to their products the name of a locality other than that of the real origin of these products.

ART. 21. They shall be punished, according to the degree of gravity of the crime, by a fine of from five Syrian pounds to one hundred Syrian pounds, or by imprisonment of from one month to six months, or both, who have indicated upon their products a locality of Syria or of Lebanon other than that of the real origin of these products, as well as those that have knowingly sold or placed on sale products of this nature.

ART. 22. Actions resulting from facts as provided for in Art. 21 shall be adjudged in conformity with the provisions of the present regulation relative to jurisdiction.

ART. 23. In the case in which products of a counterfeit mark and bearing the name of any country whatever are released at the Customs, they shall not be prohibited entry, without prejudice, however, to action being brought by manufacturers of products the marks whereof are counterfeited, if they are counterfeited abroad.

Products the owner of which shall not be known shall be held at the Custom House for one year.

On the expiration of the year, if these products are not susceptible of being kept one year more, they shall be placed on sale by way of adjudication, before they shall have deteriorated; the counterfeit mark affixed thereto shall first be destroyed.

The proceeds from the sale of these articles, deduction being made for storage charges, shall be kept at the Custom House until the end of the second year in order to be delivered to the owner following his claim; in default of claim before the said date, they shall be turned over to the Cashier's Office of the Administration for the profit of this latter.

The products seized in the Custom House, products of which it would be impossible to destroy the mark and which shall not be claimed for a full year by their owner, shall be destroyed.

ART. 24. The Secretary General, the Chief of Economic Services, the Financial Counselor of the High Commissariat, the Governor of Grand Lebanon, the Delegates of the High Commissioner at Damas and at Alep, the Administrator of the Autonomous Territory of the Alaouites, and the Administrative Counselor of the Sandjak of Alexandretta are charged, each in whatever concerns him, with the execution of the present order.

TANGANYIKA TERRITORY

AN ORDINANCE TO MAKE PROVISION FOR THE REGISTRATION OF TRADE MARKS

NO. 34 OF [OCTOBER 12] 1921

Short title

1. This Ordinance may be cited as the Trade Marks Ordinance, 1921, and shall come into operation on such date as the Governor may by notice in the *Gazette* appoint.

PART I

Definitions

2. In and for the purposes of this Ordinance (unless the context otherwise requires)—

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

A "trade mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark, by virtue of manufacture, selection, certification, dealing with or offering for sale.

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Ordinance.

"The register" shall mean the register of trade marks kept under the provisions of this Ordinance.

A "registered trade mark" shall mean a trade mark which is actually upon the register.

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by Rules of Court and in other cases prescribed by this Ordinance or the Rules thereunder.

"The Court" shall mean His Majesty's High Court of Tanganyika.

Appointment of Registrar

3. (1) The Governor shall appoint a fit and proper person, hereinafter referred to as the "Registrar," to be the Registrar of Trade Marks under and for the purposes of this Ordinance.

(2) The Registrar shall have seal of such device as may be approved by the Secretary of State, provided always that until such seal has been obtained a stamp in such form as the Governor may approve shall be used in lieu thereof.

(3) Impressions of such seal or stamp shall be judicially noticed and admitted in evidence.

(4) Any act or thing directed to be done by or to the Registrar may be done by or to any officer authorised by the Governor.

PATENT DEPARTMENT
FISK RUBBER CO.
CUDAHY, WIS.

REGISTER OF TRADE MARKS

Register of Trade Marks

4. The Registrar shall for the purposes of this Ordinance keep a book called the "Register of Trade Marks" wherein shall be entered all registered trade marks, with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters, relating to such trade marks, as may from time to time be prescribed.

Division of Register

5. (1) The Register shall be divided into two parts to be called respectively Part A and Part B.

(2) Part A shall comprise trade marks which may be registered under this Ordinance in accordance with the provisions for registration in Part A.

(3) Part B shall comprise all trade marks which may be registered under this Ordinance in accordance with the provisions for registration in Part B or which may be entered on or removed thereto under this Ordinance.

Trust not to be entered in Register

6. There shall not be entered in the Register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and extract from Register

7. The Register kept under this Ordinance shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed, and certified copies sealed with the seal of the Registrar of any entry in any such Register shall be given to any person requiring the same on payment of the prescribed fee.

REGISTRABLE TRADE MARKS

Particular goods

8. A trade mark must be registered in respect of particular goods or classes of goods.

Trade marks registrable under Part A

9. A trade mark registrable under Part A must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual or firm represented in a special or particular manner;

(2) The signature of the applicant for the registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or surname;

(5) Any other distinctive mark but a name, signature, or word or words other than such as fall within the description in the above paragraphs (1), (2), (3), and (4) shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

For the purposes of this Section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adopted the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Provided always that any mark which has been registered as a distinctive mark in Part A of the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, shall be deemed to be a distinctive mark for the purpose of this Ordinance.

Coloured trade marks

10. A trade mark may be limited in whole or in part to one or more specified colours and in such case the fact that it is so limited shall be taken into consideration by any Court having to decide on the distinctive character of such trade mark.

In and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction of registration

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice or would be contrary to law or morality, or scandalous design.

REGISTRATION OF TRADE MARKS

Application for registration

12. (1) Any person claiming to be the proprietor of a trade mark desirous of registering the same in Part A must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Ordinance the Registrar may refuse such application or may accept it absolutely

or subject to conditions, amendments or modifications or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose.

(3) In the case of such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the material used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner and on such appeal the Court shall, if required, hear the applicant and the Registrar and shall make an order determining whether, and subject to what conditions, amendments and modifications, if any, or to what limitations, if any, as to mode or place of user or otherwise the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Registration of trade marks in Part B

13. (1) Where any mark has for not less than two years been *bona fide* used in the Territory upon or in connection with any goods (whether for sale in the Territory or exportation abroad), for the purpose of indicating that they are goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale or where any mark has been registered in Part B of the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, the person claiming to be the proprietor of the mark may apply in writing to the Registrar in the prescribed manner to have the mark entered as his registered trade mark in Part B of the Register in respect of such goods.

(2) The Registrar shall consider every such application for registration of a trade mark in Part B of the Register and if it appears to him, after such search, if any, as he may deem

necessary, that the application is inconsistent with the provisions of section 11 or section 23 of this Ordinance, or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to conditions, amendments or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application.

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the Register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the Court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark in Part A of the Register.

(5) A mark may be registered in Part B notwithstanding any registration in Part A by the same proprietor of the same mark or any part or parts thereof.

Certain sections not to apply

(6) The provisions of sections 18 (9), 19, 28, 29, 31, 35 and 62 of this Ordinance shall not apply in respect of trade marks to which this section applies.

Power to treat applications for registration in Part A as applications for registration in Part B

14. If any person applies for the registration of a trade mark in Part A of the Register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the Register and deal with the application accordingly.

Removal from Register of word trade mark used as name of articles

15. (1) Where in the case of an article or substance manufactured under any patent in force at or granted after the passing of this Ordinance, a word trade mark registered under this Ordinance is the name or only practicable name of the article or substance so manufactured all rights to the exclusive use of such trade mark, whether under the common law or by registration (and notwithstanding the provisions of section 44 of the Ordinance), shall cease upon the expiration or determination of the patent, and thereafter such word shall not be deemed a distinctive trade mark, and may be removed by the Court from the

Register on the application of any person aggrieved.

(2) No word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from mixture, shall be registered as a trade mark, and any such word on the Register may, notwithstanding section 44 of this Ordinance, be removed by the Court from the Register on the application of any person aggrieved:

Provided that the provisions of this sub-section shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable and practicable name open to the public use.

(3) The power to remove a trade mark from the Register conferred by this section shall be in addition to and not in derogation of any other powers of the Court in respect of the removal of trade marks from the Register.

Address for service

16. When an applicant for the registration of a trade mark or an agent does not reside or carry on business in the Territory he shall give the Registrar an address for service in the Territory, and if he fails to do so the Register may refuse to proceed with the application until such address has been given.

Advertisement of application

17. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions and limitations, the Registrar shall as soon as may be after such acceptance cause the application as accepted to be advertised in the *Gazette*. Such advertisement shall set forth all conditions and limitations subject to which the application has been accepted.

Provided that an application under the provisions of subsection (5) of section 9 of this Ordinance may be advertised by the Registrar on receipt of such application and before acceptance.

Opposition to registration

18. (1) Any person may within the prescribed time from the date of the advertisement of an application for the registration of a trade mark give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant and within the prescribed time after the receipt of

such notice the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, or what limitations as to mode or place of user or otherwise, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, or what limitations, if any, as to mode or place of user or otherwise registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward material for the consideration of the tribunal.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinabove provided, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Territory, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being given may treat the opposition or appeal as abandoned.

Disclaimers

19. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter

common to the trade, or otherwise of a non-distinctive character the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the Register may require as a condition of its being upon the Register that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark or of all or any portion of such matter to the exclusive use of which they hold him not to be entitled or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registrations.

Provided always that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration

20. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired or, having been opposed, the opposition has been decided in favour of the applicant, the Registrar shall, unless the mark has been accepted in error, register the said trade mark, and the trade mark when registered shall be registered as of the date of the application for registration and such date shall be deemed, for the purposes of this Ordinance, to be date of registration.

Certificate of registration

21. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

Non-completion of registration

22. Where the registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant in the prescribed manner treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

IDENTICAL TRADE MARKS

23. Except by order of the Court no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the Register with respect to such goods or description of goods or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks

24. Where each of several persons claims to be the pro-

prietor of the same trade mark or of nearly identical trade marks, in respect of the same goods or description of goods and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or by the Court.

Concurrent user

25. In case of honest concurrent user or of other special circumstances which in the opinion of the Court or Registrar make it proper to do so, the Court or Registrar may permit the registration of the same trade mark or of nearly identical trade marks, for the same goods or description of goods, by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise as the Court or Registrar, as the case may be, may think it right to impose.

ASSIGNMENT

Assignment and transmission of trade marks

26. A trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill.

But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in the United Kingdom or in any British possession or protectorate or in any foreign country in connexion with any goods for which it is registered, together with the goodwill of the business therein in such goods and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of section 25 of this Ordinance, subject to such conditions and limitations as may be imposed under that section.

Apportionment of marks on dissolution of partnership

27. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks) on the application of the parties interested permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business; subject to such conditions and modifications, if any, and to such limitations, if any, as to mode or place of user as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

ASSOCIATED TRADE MARKS

28. If the application be made for the registration of a trade mark identical with or so closely resembling a trade mark of the applicant already on the Register for the same goods or description of the goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the Register as associated trade marks.

Combined trade marks

29. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the Register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks

30. When a person claiming to be the proprietor of several trade marks for the same description of goods which while resembling each other in the material particulars thereof yet differ in respect of:—

(a) statements of the goods for which they are respectively used or proposed to be used; or

(b) statements of number, price, quality or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour;

seeks to register such trade marks, they may be registered in a series in one registration. All trade marks so registered shall be deemed to be and shall be registered as associated trade marks.

Assignment and user of associated trade marks

31. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks.

Provided that where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right,

accept user of an associated trade mark with additions or alterations not substantially affecting its identity as an equivalent for such user.

RENEWAL OF REGISTRATION

Duration of registration

32. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

Renewal of registration

33. The Registrar shall, on application made by the registered proprietor of a trade mark, in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration

34. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the Register, subject to such conditions, if any, as to its restoration as may be prescribed.

Status of unrenewed trade mark

35. Where a trade mark has been removed from the Register for non-payment of the fee for renewal, such trade mark shall nevertheless for the purpose of an application for registration during one year next after the date of such removal be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bona fide* trade user of such trade mark during the two years immediately preceding such removal.

CORRECTION AND RECTIFICATION OF REGISTER

Correction of register

36. The Registrar may, on request, made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name

(1) correct any error in the name or address of the person who is registered as proprietor of a trade mark; or

(2) enter any change in the name or address of the person

who is registered as proprietor of a trade mark;

(3) cancel the entry of a trade mark on the Register;

(4) strike out any goods or classes of goods from those for which a trade mark is registered; or

(5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of assignments

37. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the Register of the assignment, transmission or other instrument affecting the title. Any decision of the Registrar under this section shall be subject to appeal to the Court.

(2) Except in cases of appeals under this section and applications made under section 39 of this Ordinance, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of sub-section (1) aforesaid shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

Alteration of registered trade mark

38. (1) The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of user as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court.

(2) If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of Register

39. Subject to the provisions of this Ordinance—

(1) The Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of any entry or by any entry made in the Register without sufficient cause or by an entry wrongfully remaining on the Register or by an error or defect in any

entry in the Register, make such order for making, expunging, or varying such entry as it thinks fit:

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of the Register:

(3) In case of fraud in the registration or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section:

(4) Any order of the Court rectifying the Register shall direct that notice of the rectification be served on the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the Register accordingly.

Non-user of trade mark

40. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the Register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connexion with such goods, and there has in fact been no *bona fide* user of the same in connexion therewith, or on the ground that there has been no *bona fide* user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon such trade mark in respect of such goods.

EFFECT OF REGISTRATION

Powers of registered proprietor

41. Subject to the provisions of this Ordinance:

(1) the person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from such Register to be vested in any other person, have power to assign the same and give effectual receipts for any consideration for such assignment;

(2) any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of the proprietor of a trade mark

42. (1) Subject to the provisions of section 44 of this Ordinance and to any limitations and conditions entered upon the Register, the registration of a person as proprietor of a trade mark in Part A of the Register shall, if valid, give to such person the exclusive right to the use of such trade mark upon

or in connexion with the goods in respect of which it is registered.

(2) The registration of a person as the proprietor of a trade mark in Part B of the Register shall be *prima facie* evidence that that person has the exclusive right to use that trade mark, but in any action for infringement of a trade mark entered in Part B of the Register, no injunction, interdict or other relief shall be granted to the owner of the trade mark in respect of such registration, if the defendant establishes to the satisfaction of the Court that the user of which the plaintiff complains is not calculated to deceive or lead to the belief that the goods, the subject of such user, were goods manufactured, selected, certified, dealt with or offered for sale by the proprietor of the trade mark.

(3) Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall (except in so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons, as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration prima facie evidence of validity

43. In all legal proceedings relating to a trade mark registered under this Ordinance (including applications under section 39 of this Ordinance) the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration conclusive after seven years

44. In all legal proceedings relating to a trade mark registered under this Ordinance in Part A of the Register (including applications under section 39 of this Ordinance) the original registration of such trade mark shall after the expiration of seven years from the date of the original registration be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 11 of this Ordinance.

Provided that nothing in this Ordinance shall entitle the proprietor of a trade mark registered under either Part A or Part B to interfere with or restrain the user by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continually used such trade mark

from a date anterior to the user or registration, whichever is the earlier, of the first mentioned trade mark by the proprietor thereof or his predecessors in business or to object (on such user being proved) to such person being put upon the Register for such similar trade mark in respect of such goods under the provisions of section 25 of this Ordinance.

Unregistered trade mark

45. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark.

Infringement

46. In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

User of name, address, or description of goods

47. No registration under this Ordinance shall interfere with any *bona fide* use by a person of his own name or place of business or that of any of his predecessors in business or the use by any person of any *bona fide* description of the character or quality of his goods.

"Passing off" action

48. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

LEGAL PROCEEDINGS

Certificate of validity in legal proceedings

49. In any legal proceeding in which the validity of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and, if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to have notice of proceeding for rectification

50. In any legal proceeding in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may

submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue, or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

COSTS

Costs of proceedings before the Court

51. (1) In all proceedings before the Court under this Ordinance the Court may award to any party such costs as it may consider reasonable and the costs of the Registrar shall be in discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

(2) In all proceedings before the Registrar, the Registrar shall have power to award to any party such costs as he may consider reasonable and to direct how and by what parties they are to be paid and any such order may be made a rule of Court.

EVIDENCE

Mode of giving evidence

52. In any proceeding under this Ordinance before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right to do so, the Registrar may (with the consent of the parties) take evidence *viva voce* in lieu or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *viva voce* the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an arbitrator appointed by the Court under the provisions of the Civil Procedure Code.

Sealed copies to be evidence

53. Printed or written copies or extracts of or from the Register or of or from the Register kept in the United Kingdom under the Trade Marks Acts, 1905 to 1919, purporting to be certified by the Registrar and sealed with his seal or by the Registrar under the Trade Marks Acts, 1905 to 1919, and sealed with the seal of the Patent Office shall be admitted in evidence in all courts and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to be evidence

54. A certificate purporting to be under the hand of the Registrar or of the Registrar of Trade Marks in the United Kingdom under the Trade Marks Acts, 1905 to 1919, as to any entry, matter or thing which he is authorised to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

GENERAL

Discretionary powers

55. In any appeal from the decision of the Registrar to the Court under this Ordinance the Court shall have and exercise the same discretionary powers as under this Ordinance are conferred upon the Registrar.

Rectification of register

56. (1) Any application for the rectification of the Register or the removal of any trade mark from the Register in respect of any goods which, under Sections 15, 39 and 40 of this Ordinance, is to be made to the Court, may, at the option of the applicant, be made in the first instance to the Registrar.

(2) Provided that no such application shall be made otherwise than to the Court where an action concerning the trade mark in question is pending.

(3) The Registrar may, at any stage of the proceedings, refer any such application to the Court or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

Removal of trade marks from Part A to Part B

(4) In any proceedings for rectification of the Register under this Ordinance the Court or the Registrar shall, in addition to the other powers conferred by this Ordinance, have power to direct a trade mark entered in Part A of the Register to be removed to Part B of the Register.

PART II

Exercise of discretionary power of Registrar

57. Where any discretionary or other power is given to the Registrar by this Ordinance or Rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required to do so within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar

58. Except where expressly given by the provisions of this Ordinance or Rules thereunder, there shall be no appeal from a decision of the Registrar, but the Court, in dealing with any question of the rectification of the Register (including all applications under the provisions of Section 39 of this Ordinance), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents

59. Where by this Ordinance any act has to be done by or to any person in connexion with a trade mark or proposed trade mark or any proceeding relating thereto, such act may under and in accordance with Rules made under this Ordinance or in particular cases by special leave of the Registrar be done by or to an agent of such party duly authorised in the prescribed manner.

Power to make Rules

60. (1) Subject to the provisions of this Ordinance the Governor may from time to time make such Rules, prescribe such forms, and generally do such things as he may deem expedient—

(a) For regulating the practice under this Ordinance;

(b) For classifying goods for the purposes of registration of trade marks;

(c) For making or requiring duplicates of trade marks and other documents;

(d) For securing and regulating the publishing and selling or distributing in such manner as the Governor may think fit, of copies of trade marks and other documents;

(e) Generally, for regulating all things by this Ordinance placed under the direction or control of the Registrar.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Ordinance.

(3) Until other provision is made the Rules and forms in force and prescribed in England under the Trade Marks Acts, 1905 to 1919, at the date of this Ordinance shall with such modifications as circumstances may require be deemed to be Rules made and forms prescribed under this Ordinance.

Fees

61. There shall be paid in respect of applications and registrations and other matters under this Ordinance, such fees as the Governor may from time to time prescribe.

Standardization, etc., trade marks

62. Where any association or person undertakes to certify

the origin, material, mode of manufacture, quality, accuracy or other characteristic of any goods by mark used upon or in connexion with such goods, the Governor, if and so long as he is satisfied that such association or person is competent to certify as aforesaid, may, if he shall judge it to be to the public advantage, permit such association or person to register such trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connexion with such certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor.

Offences

63. (1) If any person makes or causes to be made a false entry in the Register kept under this Ordinance or a writing falsely purporting to be a copy of an entry in such Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and on conviction shall be liable to imprisonment of either description for a term not exceeding five years.

(2) Any person who represents any trade mark as registered which is not so shall be guilty of an offence and liable on conviction to a fine not exceeding 100 Rupees or Florins.

A person shall be deemed for the purposes of this subsection to represent that a trade mark is registered if he uses in connexion with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

Royal Arms

64. If any person, without the authority of His Majesty, uses in connexion with any trade, business, calling or profession the Royal Arms (or Arms so closely resembling same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family uses in connexion with any trade, business, calling or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and liable on conviction to a fine not exceeding Rupees or Florins 300.

Provided that nothing in this Section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

International and Colonial arrangements

65. (1) Where any person who has registered or who has applied for protection for any trade mark in the United Kingdom or in any foreign state with the Government of which His Majesty may have been pleased to make any arrangement for mutual protection of trade marks, such person or his legal representative or assignee shall be entitled to registration of his trade mark in priority to other applicants; and such registration shall have the same date as the date of application for protection in the United Kingdom or foreign state or as the date of the commencement of this Ordinance, whichever shall be the later.

Provided that

(a) the application for registration is made within four months from the date of the commencement of this Ordinance or of the application for protection in the United Kingdom or foreign state; and

(b) nothing in the section shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in this Territory.

(2) The registration of a trade mark shall not be invalidated by reason only of the use of the trade mark in the Territory during the aforesaid period of four months.

(3) The application for the registration of a trade mark under this Section must be made in the same manner as an ordinary application under this Ordinance: provided that any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Ordinance.

(4) The provisions of this Section shall apply only in the case of the United Kingdom and of those foreign states with respect to which the Governor may by Proclamation to be published in the *Gazette* declare them to be applicable and so long only in the case of each of such foreign states as the Proclamation continues in force with respect to that state.

(5) Where it is made to appear to the Governor that the legislature of any British possession has made satisfactory provision for the protection of trade marks registered in this Territory, it shall be lawful for the Governor by Proclamation to apply the provisions of this section to that possession with

such variations or additions (if any) as may be stated in the Proclamation.

German trade marks

66. (1) For the purpose of fulfilling any obligation imposed by the Treaty of Versailles the Governor may on the application of the proprietor thereof direct that, notwithstanding anything contained in this Ordinance, any trade mark which at the time of the separation of this Territory from Germany by virtue of the aforesaid Treaty was in force in this Territory shall be entered in the Register in whichever part thereof he shall deem the more appropriate and such trade mark shall thereupon remain in force in this Territory for the same period of time given it under German law.

(2) The application for the registration of a trade mark under this Section must be made in the same manner as an ordinary application under this Ordinance and must be supported by such evidence as the Governor may require.

Provisions as to Public Holidays

67. Whenever the last day fixed by this Ordinance, or by any rule for the time being in force, for leaving any document with, or paying any fee to the Registrar, shall fall on Sunday or Public Holiday, it shall be lawful to leave such document or to pay such fee on the day fixed following such Sunday or Public Holiday or Holidays if two or more of them occur consecutively.

TRINIDAD AND TOBAGO

ORDINANCE NO. 10 OF MARCH 12, 1900

Short Title

1. This Ordinance may be cited as "The Patents, Designs and Trade Marks Ordinance, 1900."*

Appointment of Registrar

2. It shall be lawful for the Governor to appoint a Registrar of Patents, Designs and Trade Marks (in this Ordinance called the Registrar), with an office to be called the Registry of Patents, Designs and Trade Marks (in this Ordinance called the Registry), and until such appointment be made, the Registrar-General shall be and perform the duties of such Registrar, and the office of the said Registrar-General shall be such Registry, and such Registry shall be deemed to be for all purposes within the department of the Registrar-General.

. . . . . .

PART III—TRADE MARKS

Register of Trade Marks

25. There shall be kept at the Registry a book called "The Register of Trade Marks" wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments, charges and transmissions of trade marks, and such other matters as may be from time to time prescribed.

Application for Registration

26. (1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, and on payment of the prescribed fee, register the trade mark.

(2) The application must be made in form D in the First Schedule to this Ordinance or in such other form as may be from time to time prescribed, and must be left at the Registry in the prescribed manner.

(3) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular class of goods or classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4) The Registrar may, if he thinks fit, refuse to register a trade mark, subject to appeal to a Judge in Chambers.

Limit of Time for Proceeding with Application

27. Where the registration of a trade mark shall not be

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* Matter relating to patents and designs is omitted.

completed within twelve months from the date of the application by reason of default on the part of the applicant the application shall be deemed to be abandoned.

Conditions of Registration of Trade Mark

28. (1) For the purposes of this Ordinance a trade mark must consist of or contain at least one of the following essential particulars:

(a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c) A distinctive device, mark, brand, heading, label, or ticket; or

(d) An invented word or invented words; or

(e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this Section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided as follows:

(i) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(ii) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade mark either in the Colony, or elsewhere, before the thirteenth day of August, 1875, may be registered as a trade mark.

Connexion of Trade Mark with Goods

29. A trade mark must be registered for particular goods or classes of goods.

Registration of a Series of Marks

30. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed

to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade Marks May Be Registered in Any Colour

31. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Ordinance) confer on the registered owner the exclusive right to use the same in that or any other colour.

32. Every application for registration of a trade mark under this Ordinance shall as soon as may be after its receipt be advertised by the Registrar in the *Royal Gazette* of the Colony, unless he shall refuse to entertain the application.

Opposition to Registration

33. (1) Any person may within three months of the first advertisement of the application give notice in duplicate to the Registrar of opposition to registration of the trade mark and the Registrar shall send one copy of such notice to the applicant.

(2) Within one month after receipt of such notice or such further time as the Registrar may allow, the applicant may send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

Conflicting Claims to Registration

34. On the receipt of such counter-statement or where each of several persons claims to be registered as proprietor of the same trade mark the Registrar may refuse to register any of them until their rights have been determined by the Court.

Restrictions on Registration

35. (1) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2) Except as aforesaid, the Registrar shall not register with respect to the same goods or description of goods a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Words Likely to Deceive Not to be Registered

36. It shall not be lawful to register as part of or in combination with a trade mark any words the use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in an English Court of Justice.

Saving for Power to Provide Entry on Register of Common Marks as Additions to Trade Marks

37. (1) Nothing in this Ordinance shall be construed to prevent the Registrar entering on the register in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark, any distinctive word or combination of words, or, in the case of a trade mark used before the 13th day of August, 1875, in this Colony or elsewhere, any distinctive device, mark, brand, heading, label, ticket, letter, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made.

(2) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register. Provided that a person need not under this Section disclaim his own name or the foreign equivalent thereof or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(3) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words or figures, which was or were before the 13th day of August, 1875, publicly used by more than three persons in this Colony or elsewhere, on the same or a similar description of goods shall for the purposes of this Section be deemed common to the trade in such goods.

Application to Equal Public Use of Trade Mark

38. Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Ordinance be deemed to be, and as from the first day of January, 1876, to have been the date of the registration.

Right of First Proprietor to Exclusive use of Trade Mark

39. The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence

of his right to the exclusive use of the trade mark, subject to the provisions of this Ordinance.

Infringement of a Trade Mark May be Restrained and Damages Recovered

40. The infringement of a trade mark may be restrained, and damages for such infringement recovered in an action in the Supreme Court, if such trade mark has been registered, or if registration thereof in the register of trade marks has been refused, but in no other case. The Registrar may on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Plaintiff to Have Full Costs in Subsequent Action

41. In an action for infringement of a registered trade mark the Court or a Judge may certify that the right to the exclusive use of the trade mark came in question, and if the Court or a Judge so certifies, then in any subsequent action for infringement the plaintiff in the action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the subsequent action certifies that he ought not to have the same.

Assignment and Transmission of Trade Mark

42. A trade mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Alteration of Registered Mark

43. (1) The registered proprietor of any trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Ordinance, and the Court may refuse or grant leave on such terms as it may think fit.

(2) Notice of any intended application to the Court under this Section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(3) If the Court grants leave, the Registrar shall on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Removal of Trade Mark After Fourteen Years Unless Fee Paid

44. (1) At the expiration of fourteen years from the date of the registration the trade mark shall be removed from the

register unless the proprietor pays to the Registrar before the expiration of such fourteen years the prescribed fee, and so from time to time at the expiration of every period of fourteen years.

Provided that three months at least before the expiration of such period the Registrar shall give due notice of such approaching expiration to the proprietor of such trade mark.

(2) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(3) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall nevertheless, for the purpose of any application for registration during the one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark.

PART IV—GENERAL

Trusts Not to be Entered in Registers

45. There shall not be entered in any register kept under this Ordinance, or be receivable by the Registrar, any notice of any trust expressed, implied or constructive.

Refusal to Register Trade Mark, &c., in Certain Cases

46. The Registrar may refuse . . . to register a . . . trade mark which is, or of which the use would be, scandalous or contrary to law or morality.

Trade Mark Deemed to be Registered When Name of Proprietor Entered in Register

47. Any . . . trade mark shall be deemed to be registered when the name of any person is entered, as the proprietor thereof, in the . . . register of trade marks . . . .

Entry of Assignments and Transmissions in Registers

48. Where a person becomes entitled by assignment, transmission, or other operation of law . . . to a registered trade mark, the Registrar shall, on request, and on proof of title, cause the name of such person to be entered as proprietor of the . . . trade mark, in the register of . . . trade marks . . . . The person for the time being entered in the register of . . . trade marks, as proprietor of a . . . trade mark . . . shall,

subject to the provisions of this Ordinance and to any rights, appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, license or dealing. Provided that any equities in respect of such . . . trade mark may be enforced in like manner as in respect of any other personal property: Provided also that the priority of all assignments and charges shall, as regards purchasers for value without notice, be determined by priority of registration.

Inspection of and Extracts from Register

49. Every register kept under this Ordinance shall be *prima facie* evidence of all matters duly entered therein, and every such register . . . open to the inspection of the public on payment of the prescribed fee, subject to the provisions of this Ordinance and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Registry, of any entry in such register or of any such specification, shall be given to any person requiring the same on payment of the prescribed fee: Provided that whenever any . . . extract includes any tracing, drawing, or diagram, an additional fee for any copy thereof shall be paid equal to the cost of preparing such tracing, drawing, or diagram.

Power for Registrar to Correct Clerical Errors, &c., Amendment of Application

50. The Registrar may, on request in writing, accompanied by the prescribed fee:

(a) Correct any clerical error in or in connection with an application . . . for registration of a design or trade mark; or

(b) Correct any clerical error in the name, style, or address of the registered proprietor of a . . . trade mark; or

(c) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself stating his name, address and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

(d) Permit an applicant for registration of a . . . trade mark to amend his application by omitting any particular goods or classes of goods in connexion with which he has desired the . . . trade mark to be registered.

Certificate of Registrar to be Evidence

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is author-

ized by this Ordinance, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Orders Affecting Registrar May be Made by a Judge

52. An order requiring the Registrar to do, or abstain from doing, anything under this Ordinance may be made by a Judge on a summons in Chambers.

Court or Judge May Make Orders, Impose Terms, &c.

53. In any proceedings under this Ordinance the Court or a Judge, as the case may be, may at any time make such orders for an injunction, inspection, or account, impose such terms, and give such directions as to the order in which the parties shall be heard, and the procedure under this Ordinance generally, as the Court or Judge shall see fit.

Declaration by Infant, Lunatic, &c.

54. If any person is by reason of infancy, lunacy or other disability, incapable of making any declaration or doing anything required or permitted by this Ordinance or by any rules made under the authority of this Ordinance, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect of the property of persons under disability, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making of such declaration or doing such thing, may make such declaration, or a declaration as nearly as possible corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable persons, and all acts done by such substitute shall for the purposes of this Ordinance be as effectual as if done by the person for whom he is substituted.

Publication Quarterly of List of Trade Marks Registered

55. The Registrar shall cause to be published during each quarter in the *Royal Gazette* a list of all . . . trade marks registered during the preceding quarter, and any further information that he may deem generally useful or important.

Transmission of Copies of Specification, &c.

56. Copies of . . . all published lists of registered . . . trade marks shall be transmitted to the Controller of Patents, Designs, and Trade Marks in England.

Power to Make Rules for Classifying Goods and Regulating Business of Registry Fees, Payment of

57. The Registrar, with the sanction of the Governor, may from time to time make such general rules and do such things

as he may think expedient for regulating the practice of registration under this Ordinance, for classifying goods for the purposes of . . . trade marks, for prescribing the fees to be paid under this Ordinance, or for any other purpose which may be or be deemed necessary for the carrying out of the provisions of this Ordinance; and shall also have power to alter, add to, amend or revoke any such rules.

Subject to the Provisions hereinbefore contained, the fees mentioned in the Second Schedule to this Ordinance shall be paid to the Registrar.

Any rules made in pursuance of this Section shall be laid before the Legislative Council and shall be published in the *Royal Gazette.*

Declaration

58. Any declaration required to be made under this Ordinance may be taken by the Registrar.

Interpretation

59. In this Ordinance:

. . . . . .

"Person" includes a body corporate.

"Court" means the Supreme Court of Trinidad and Tobago.

"Judge" means a Judge of the Supreme Court.

"Law Officer" means Her Majesty's Attorney-General or Solicitor-General in this Colony.

"Registrar" shall include any Deputy Registrar or person acting under the authority of such Registrar.

"Registered" means registered in . . . the register of trade marks . . . : and "Registration" has a corresponding meaning.

"Prescribed" means prescribed by any of the Schedules to or Rules made under the provisions of this Ordinance, or by any other Ordinance applicable to the case.

. . . . . .

"Class" means prescribed class.

"Certified" means certified in accordance with the provisions of the Ordinance No. 9 of 1892.

Repeal

60. The Ordinances Nos. 40 of 1894 and 11 of 1897 are hereby repealed.

Passed in Council this twelfth day of March, in the year of our Lord one thousand nine hundred.

ORDINANCE OF MAY 15, 1913

AN ORDINANCE TO AMEND THE PATENTS, DESIGNS AND TRADE MARKS ORDINANCE, No. 76

Short Title

1. This Ordinance may be cited as the Patents, Designs and Trade Marks (Amendment) Ordinance, 1913.

Standardization, etc., Trade Marks

2. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connexion with such goods, the Governor may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connexion with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor.

Passed in Council this thirtieth day of April, in the year of Our Lord one thousand nine hundred and thirteen.

TUNIS

DECREE OF JUNE 3, 1889, AS AMENDED BY DECREES OF OCTOBER 22, 1892, AND APRIL 7, 1908

Title I—Right of Ownership in Trade Marks

Article 1. A mark of manufacture or of commerce is optional. However, decrees may, in exceptional cases, declare it obligatory for products that they distinguish. There shall be considered as marks of manufacture or of commerce: names under a distinctive form, denominations, emblems, imprints, stamps, seals, vignettes, reliefs, letters, ciphers, envelopes, and all other signs serving to distinguish the products of a factory or the objects of a line of business.

Art. 2. No person may claim the exclusive ownership of a mark unless he has deposited in the Clerk's Office of the Tribunal of his domicile:

1) Three copies of the design of this mark;
2) A typographic *cliché* (electrotype) of this mark.

Title II—Deposit

Art. 3. The deposit that manufacturers, merchants, or agrarians, may make of their marks in the Clerk's Office of the Tribunal of their domicile in order to enjoy the rights emanating from the present decree shall be subject to the following provisions:

Art. 4. The deposit must be effected by the party interested or by his special attorney. The power of attorney may be under private signature, without there being need of having it legalized. The design to be furnished shall consist of three copies upon plain paper, of a drawing, of an engraving, or of a print, representing the mark adopted. The paper shall form a square of 18 centimetres, the design part of which shall occupy the center.

If the mark is in intaglio or in relief upon the goods; if it has had to be reduced in order to not exceed the dimensions of the paper, or if it presents some other peculiarity, the depositor shall so indicate upon the three copies, either by one or more figures of detail, or by means of an explicative legend. These indications must occupy the left side of the paper upon which the mark figures. The right side is reserved for the mentions prescribed by Art. 6.

Art. 5. One of the three copies of the mark shall be pasted by the Clerk on one of the sheets of a Register kept to this effect

and in the order of presentation. The second shall be transmitted within five days, at latest, to the Director General of Agriculture, Commerce and Colonization (Bureau of Commercial and Industrial Affairs) in order to be placed in the Archives. The third shall be forwarded to the depositor provided with the *visé* of the Clerk bearing the indication of the day and the hour of the deposit.

The Register shall be of plain paper, of the format of 24 centimetres in width by 40 in height, annotated and initialed by the President of the Tribunal or by a Deputy Judge.

ART. 6. The Clerk shall enter a *procès-verbal* of the deposit, in the order of presentation, in the Register, annotated and initialed as is indicated in the preceding article. In this *procès-verbal* he shall indicate:

1) The day and the hour of the deposit;

2) The name of the proprietor of the mark and that of his attorney;

3) The calling of the proprietor, his domicile, and the class of industry for which he intends to make use of the mark. Each *procès-verbal* shall bear a serial number. This number shall likewise be written upon the three copies, as well as the name, the domicile or the profession of the owner of the mark, the date of the deposit and the class of industry for which the mark is intended.

When, on the expiration of the period during which the deposit shall be of effect, the proprietor of a mark makes a new deposit thereof, this circumstance must be mentioned upon the designs and in the *procès-verbal* of the deposit. The *procès-verbal* and the designs shall be signed by the Clerk and by the depositor or by his attorney. A draft of the *procès-verbal* shall be delivered to the depositor.

ART. 7. There shall be collected a fixed fee of one franc twenty-five centimes for the drawing up of the *procès-verbal* of deposit and for the cost of transmission.

In the case of the deposit of several marks belonging to the same person, there shall be drawn up only one *procès-verbal*, but there must be deposited as many designs in triplicate and as many *clichés* as there are different marks.

ART. 8. At the commencement of each year, the Clerk shall prepare a table or list of the marks of which he has received the deposit during the course of the preceding year. This list shall be published, under the supervision of the Direction General of Agriculture, Commerce, and Colonization (Bureau of Commercial and Industrial Affairs), in the *Journal Officiel de la Régence*.

ART. 9. The Registers, *procès-verbaux,* and lists deposited with the Clerk's Office, as well as the designs collected at the Central Dépôt of the Archives, shall be at the disposition of the public without charge.

ART. 10. The deposit shall be of effect only for fifteen years. The ownership of the mark may always be conserved for a new term of fifteen years, by means of a new deposit.

ART. 11. The dimensions of the *clichés* must not exceed 12 centimetres per side.

The *clichés* shall be returned to those interested after the official publication of the marks by the Bureau of Commercial and Industrial Affairs.

TITLE III—PROVISIONS REGARDING FOREIGNERS

ART. 12. Foreigners that possess within the Regency establishments of industry or of commerce, or agricultural exploitations, may enjoy, for the products of their establishments, the benefit of the present decree, on the fulfillment of the formalities that it prescribes.

ART. 13. Foreigners and Tunisians, the establishments of whom are situated without the Regency, shall enjoy likewise the benefit of the present decree for the products of these establishments, if, in the countries in which they are situated, legislation or international treaties assure to industrials located in Tunis the same guarantees.

ART. 14. The Clerk charged, in the case provided for in Art. 4, with receiving the deposit of the marks of foreigners and Tunisians, whose establishments are situated without the Regency, must provide therefor a special Register and mention in the *procès-verbal* of deposit the country in which the industrial, commercial, or agricultural establishment of the owner of the mark is situated, as well as the legislation or the international treaties in accordance with which reciprocity has been established.

TITLE IV—PENALTIES

ART. 15. They shall be punished by a fine of from 30 francs to 1,800 francs and by imprisonment of from three months to three years, or by either of these penalties:

1) That have counterfeited a mark or have made use of a counterfeit mark;

2) That have fraudulently affixed to their products or to the objects of their trade a mark belonging to another;

3) That have knowingly sold or placed on sale one or more products bearing a counterfeit or fraudulent mark.

ART. 16. They shall be punished by a fine of from 30 francs

to 1,200 francs and by imprisonment of from one month to one year, or by either of these penalties:

1) That, without counterfeiting a mark, have made a fraudulent imitation thereof of a nature to deceive the purchaser, or have made use of a fraudulently imitated mark;

2) That have made use of a mark bearing indications possible of deceiving the purchaser as to the nature of the product;

3) That have knowingly sold or placed on sale one or several products bearing a fraudulently imitated mark or bearing indications possible of deceiving the purchaser as to the nature of the product.

ART. 17. They shall be punished by a fine of from 30 francs to 600 francs and by imprisonment of from 15 days to 6 months, or by either of these penalties:

1) That have not affixed to their products a mark declared obligatory;

2) That have sold or placed on sale one or several products not bearing the mark declared obligatory for this class of goods;

3) That have contravened the dispositions of decrees rendered in the execution of the first article of the present decree.

ART. 18. Whoever shall have either affixed, or have caused to appear, by addition, deletion, or by any alteration whatever, upon manufactured goods, the name of a manufacturer other than of him that is the originator, or the commercial firm of a manufacture other than that in which the said goods shall have been manufactured, or, finally, the name of a place other than that of the fabrication, shall be punished, without prejudice to damages and injuries, should there be occasion therefor, by imprisonment for three months, at least, and one year, at most, and by a fine that may not exceed the quarter of the restitutions and damages and injuries, and which shall not be less than thirty francs.

The objects of the crime, or their value, if they yet belong to the seller, shall be confiscated. The Tribunal may order the posting of the judgment in places that it shall designate and its integral insertion or a part thereof in journals that it shall designate, the whole at the cost of the condemned party. Every merchant, commission merchant, or storekeeper whatever shall be amenable to the effects of prosecution, when he shall have knowingly exposed for sale or placed in circulation objects marked with fictitious or altered names.

ART. 19. The penalties established by the present decree may not be cumulative. The highest penalty alone shall be pronounced for all acts anterior to the first action for prosecution.

ART. 20. The penalties provided for in Arts. 15, 16, and

17, may be increased to double in case of repetition, when there has been pronounced against the accused, within the five preceding years, a condemnation for one of the crimes foreseen by the present decree.

ART. 21. If the circumstances appear attenuating, the Tribunal is authorized—even in case of repetition—to reduce the imprisonment even to less than six months, and the fine to even less than 30 francs. It may also separately pronounce either of these penalties, and even substitute fine for imprisonment, without it being in any case less than 9 francs 60 centimes.

ART. 22. Delinquents may, in addition, be deprived of the right to participate in the elections of the Chambers of Commerce during a term that shall not exceed ten years. The Tribunal may order the posting of the judgment in places that it shall determine, and its insertion integrally or in part in journals that it shall designate, the whole at the cost of the condemned party.

ART. 23. The confiscation of the products, the mark of which shall be recognized as contrary to the dispositions of Arts. 15 and 16, may, even in case of acquittal, be pronounced by the Tribunal, as well as that of the instruments and utensils having specially served for the commission of the crime. The Tribunal may order that the products confiscated be delivered to the proprietor of the mark that is counterfeited or fraudulently affixed or imitated, independently of the most ample damages and injuries, should there be such. It shall order, in any case, the destruction of the marks recognized as contrary to the dispositions of Arts. 15 and 16.

ART. 24. In the case foreseen by the first two paragraphs of Art. 17, the Tribunal shall also order that marks declared obligatory shall be affixed to the products for which they are stipulated. The Tribunal may order the confiscation of the products if the accused party has received, within the five preceding years, a conviction for one of the crimes foreseen by the first two paragraphs of Art. 17.

TITLE V—JURISDICTION

ART. 25. The French Tribunals alone shall be competent to hear all demands and litigations relative to the application of the present decree. Civil actions relative to marks shall be lodged with the Civil Tribunals of First Instance and adjudged as summary cases. In case of action brought criminally, if the accused raises in his defense questions relative to the ownership of the mark, the Criminal Police Tribunal shall decide on the exception.

ART. 26. The proprietor of a mark may have proceedings

taken by bailiffs for a detailed description, with or without seizure, of the products that he alleges as marked to his prejudice in contravention of the present decree, by virtue of an order of the President of the Civil Tribunal of First Instance or by a Justice of the Peace, in default of the Tribunal, in the place in which are found the products to be described or be seized. The order shall be granted on simple request and upon the presentation of a *procès-verbal* evidencing the deposit of the mark. It shall contain, should such be necessary, the nomination of an expert to aid the bailiff in the description. When seizure is requested, the Judge may require of the petitioner a bond which he is bound to give before having the seizure carried out. There shall be left with the holders of the objects described or seized a copy of the order and of the instrument evidencing the deposit of the bond, should such have been required, the whole on pain of avoidance and damages and injuries against the bailiff.

ART. 27. In default by the petitioner of having brought action, either civilly or criminally, within a delay of fifteen days, in addition to one day for each five myriametres of distance between the place in which are found the objects described or seized and the domicile of the party against whom the action has been brought, the description or the seizure shall be null in law, without prejudice to damages and injuries that may be claimed, should there be occasion for such.

TITLE VI—GENERAL OR TRANSITORY PROVISIONS

ART. 28. All foreign products bearing either the mark or the name of a manufacturer residing in Tunis, or the indication of a name or of a place of manufacture of Tunis, shall be prohibited entry and excluded from transit and storage, and they may be seized in any place whatsoever, either through the oversight of the Customs Administration or on request of the Public Minister, or of the party injured. In the case in which the seizure is made at the request of the Customs Administration, the *procès-verbal* of seizure shall be forthwith forwarded to the Public Minister. The delay within which the action foreseen by Art. 26 shall be brought under pain of avoidance of the seizure, either by the party injured or by the Public Minister, is set at two months.

The dispositions of Art. 23 shall be applicable to products seized in virtue of the present article.

ART. 29. All the dispositions of the present decree shall be applicable to wines and other beverages, to live stock, grains, flour, and generally to all products of agriculture.

TURKEY

LAW OF MAY 11, 1888 (29 CHABAN 1305)

SECTION I

The Right of Ownership of Marks

Article 1. There shall be considered as marks of manufacture and of commerce: names, denominations, seals, stamps, emblems, letters, ciphers, envelopes and other distinctive signs, that is to say any emblem and stamp serving to distinguish the locality or the factory from which emanate articles and products, the names and denominations of factories, of manufacturers and of those that trade in these products.

Art. 2. The employment or the adoption of marks of manufacture or of commerce is optional. However, in case of need, they shall become obligatory for certain products following an order from the authorities. It is formally understood that emblems adopted as marks must not be emblems of seditious character or contrary to public morality and good custom. Emblems of this nature may not be adopted, accordingly, as marks.

Art. 3. No one may claim the exclusive ownership of a mark and, in consequence, may not lodge action against counterfeiters, unless he has deposited two specimens of the design of this mark with the Ministry of Commerce and of Justice at Constantinople, and with the Administrative Council, and with the office of the Clerk of the Court of Appeals in the provinces, as is provided for in Section II.

Art. 4. The mark deposited officially in accordance with the terms of Art. 3, above, shall be effective only for fifteen years.

However, the right of exclusive ownership of the mark may be renewed by means of a new deposit of the specimens of the design of the mark, every fifteen years.

The right of ownership of a mark may be assigned by its owner to third parties with the authorization of the Imperial Government the same as in case of the decease of the owner, this right devolving upon his heirs.

Art. 5. There shall be collected a fee of from two and one-half Turkish Pounds to five Turkish Pounds for the *actes* (*Ilmou-haber*) evidencing the deposit of the specimens of the mark and for delivery to its owner; the payment and the recording of the fee shall be effected at Constantinople with the Minis-

try of Commerce, and in the Provinces with the Administrative Council, to be transmitted to said Ministry.

ART. 6. Foreigners that carry on in Turkey an industry or business shall likewise have the right to adopt a mark for the products of their establishments and the articles of their commerce on condition of subjecting themselves to the terms of the present Regulation; in this case they shall enjoy the advantages and guarantees assured by the said Regulation.

Actions relative to marks shall be, even if the two parties belong to foreign nationalities, lodged in accordance with the present Regulation, with the Ottoman Tribunals, as is provided for in Art. 11.

SECTION II

FORMALITIES TO BE FULFILLED FOR THE OFFICIAL DEPOSIT OF SPECIMENS OF THE DESIGN OF THE MARK

ART. 7. Any person that desires to deposit his mark with the authorities provided for in Art. 3 shall, either in person or through his attorney, provided with the required authority by virtue of a power of attorney in good and due form, present to the Ministry of Commerce, at Constantinople, and to the Administrative Council of the Province, in the Provinces, two specimens of his mark, if this latter consists of an object that may be affixed, such as a stamp or seal, or even two printed designs without any dissimilarity as respects the original of the mark if this mark consists in any other emblem, with all indications necessary and signed and sealed at the bottom by the owner or by his attorney, who shall, likewise, affix thereto the power of attorney; and all other documents, if there are any, shall be annexed to said specimens or printed designs.

ART. 8. The First Secretary of the Council with which the specimens or printed designs of the mark have been deposited must, after having pasted one of the specimens of the mark upon a sheet of the Register kept for this purpose, enter thereon: (1) the date of the deposit; (2) the name of the owner of the mark and that of the attorney, should there be one; (3) the profession and the domicile of the owner of the mark; (4) the indication of the nature of the products or of the articles for which the mark is intended; (5) the serial number of these documents. These documents shall be signed and sealed by the Ministry of Commerce if the deposit is made at Constantinople, or, by the Administrative Council of the Province, if it is done in the Provinces; they shall likewise be signed or sealed by the owner of the mark or by his attorney.

The second specimen or printed design intended for the

Ministry of Justice shall be affixed to a piece of paper that shall bear all the indications mentioned above and which likewise shall be signed or sealed by the owner or by his attorney. In case the deposit of the mark should be effected in a Province, a third specimen or printed design shall be sent to the Ministry of Commerce.

ART. 9. The formalities provided for in the preceding articles once fulfilled, the Ministry of Commerce, at Constantinople, or the Administrative Council of the Province in the Provinces, shall deliver a provisional *acte* (*Ilmou-haber*) sealed by them pending the issue of the final *acte* (*Ilmou-haber*) delivered by the Ministry of Justice after having collected the fee provided for in Art. 5.

ART. 10. The Governor-General shall send by the first courier to the Ministry of Justice the specimen or printed design of the mark with an extract of the registration intended, as is mentioned in Art. 8, for this Ministry, with which the said documents shall be registered and preserved.

The Ministry of Justice shall draw up, in consequence, an *acte* (*Ilmou-haber*), printed and in official form, and shall forward it to the Province within a term of one month at most.

SECTION III

JURISDICTION

ART. 11. Civil action relative to marks shall be brought before Courts of the First Instance of the Empire and they shall be adjudged there as summary cases. Criminal actions relative thereto shall likewise be adjudged by the said Courts.

If, in case of action brought criminally, the accused shall raise questions relative to the mark, the criminal section of the Court entrusted with the principal action shall also decide regarding the exception.

ART. 12. The owner of a mark may have the Court proceed with the detailed description of the nature of the goods and the quantity of the products and articles that he claims to have been marked to his injury and in contravention of the dispositions of the present Regulation; he may, likewise, should there be occasion, cause them to be seized by virtue of an order of the Court.

The order shall be made on petition of the plaintiff and upon presentation by him of the *acte* (*Ilmou-haber*) evidencing the deposit of his mark. The Court shall name, should there be occasion, an expert to aid the judicial personnel charged with this duty.

When the seizure of the goods is petitioned, the Court may, before ordering the seizure, require of the owner of the mark

a bond, should it so deem necessary. There shall be communicated to the holder of the products described and seized a copy of the order of the Court and of the *acte* evidencing the deposit of the bond, if such has been required. In case of defect in the above indicated formalities; that is to say, in the case in which the said copy shall not be communicated, the formalities fulfilled shall be considered as null and void, and an official so neglecting shall be amenable to damages.

ART. 13. In default by the plaintiff of bringing action within the term of fifteen days, adding to this delay one day for each six hours of distance between the locality in which the inventoried and seized objects are located and the domicile of the defendant, the description or the seizure of the objects shall be null and void, without, however, prejudicing an action for damages which may be brought.

SECTION IV

PENALTIES PRESCRIBED FOR THE COUNTERFEITER OF DULY DEPOSITED MARKS

ART. 14. They shall be punished by a fine of from two to fifty Turkish pounds or by imprisonment of from one month to six months, or again by the two penalties at the same time, according to the degree of gravity of the crime: (1) that have counterfeited a mark whose design or facsimile is found deposited in conformity with the present law, or makes use of a counterfeit mark; (2) that have fraudulently affixed upon their products or their articles of commerce a mark belonging to another; (3) that have knowingly sold or placed on sale one or several kinds of products or articles bearing a counterfeit or fraudulently affixed mark.

ART. 15. They shall be punished by a fine of from two to thirty Turkish pounds, or by imprisonment of from one week to two months, or again by these two penalties at the same time: (1) that have fraudulently altered a mark, or have made use of a fraudulently altered mark; (2) that have affixed marks proper for one kind of product or article to another kind of product or article with the manifest intention of deceiving the buyer as to the nature of the goods; (3) that have knowingly sold or have offered for sale goods bearing these marks.

ART. 16. They shall be punished with a fine of from one to ten Turkish pounds or by imprisonment of from twenty-four hours to one week, or again by these two penalties at the same time: that have not affixed upon their goods or articles, determined by the Ministry of Commerce, the mark deposited, as is provided in Art. 2, and those that have sold or placed on sale products not bearing said mark.

ART. 17. In case an individual should be brought to account on the ground of divers crimes determined in the present Regulation, he shall be amenable only to the penalty prevailing for the gravest crime.

ART. 18. In case of repetition, the penalties shall be doubled at most.

There shall be considered as a repeater any individual that, after having been punished for one of the crimes above mentioned, shall commit one of these crimes within five years, counting from the date of the first conviction.

ART. 19. The confiscation of objects and articles, the mark whereof shall be recognized as contrary to the provisions of Arts. 14 and 15, as well as of the instruments and tools that have specially served for the making of this mark, may be ordered by the tribunal, even in case of conviction of the accused.*

The Court may order that articles bearing a mark, counterfeit or belonging to another, and confiscated, along with the counterfeit mark, be delivered to the owner of the genuine mark.

The value of these articles may, if necessary, be appraised for the payment of damages. All marks recognized as contrary to the dispositions of Arts. 14 and 15 shall be destroyed in every case.

ART. 20. Those that have knowingly offered for sale products not bearing the mark declared obligatory for this kind of product shall be amenable to the penalty provided for in Art. 15, without prejudice to the obligation of affixing upon these articles the marks declared obligatory.

In case of repetition within a term of five years, counting from the date of the conviction for a crime of this nature, the Court may order the confiscation of the goods and articles.

SECTION V

PENALTIES RELATIVE TO FALSE INDICATIONS OF ORIGIN

ART. 21. They shall be punished, according to the degree of gravity of the crime, by a fine of from two to fifty Turkish pounds or by imprisonment of from one month to six months, or again by these two penalties at the same time: that have indicated, such as it is or with other characteristics, on goods, a locality of the Ottoman Empire other than that of the real

*"La confiscation . . . pourra être prononcée par le Tribunal, *même en cas de condemnation* du prévenu" (from official copy in French, issued by the Direction Générale de l'Industrie of the Ministère du Commerce et de l'Agriculture, Constantinople).

The intent of this proviso is doubtful, other laws drawn up on the same model using the expression "*even in case of acquittal.*" See Greece, Italy, Tunis, and Morocco (French Zone), etc.

origin of these products, as well as those that have knowingly sold or placed on sale products of this nature.

ART. 22. Actions resulting from facts foreseen in Art. 21 shall be adjudged in conformity with the provisions of the present Regulation relative to jurisdiction.

ART. 23. In case the products of the mark counterfeited and bearing the name of any country are unladen at the custom house, they shall not be prohibited entry, without prejudice, however, to action being brought by manufacturers of products whose marks are counterfeited, if they are counterfeited abroad; if Ottoman products counterfeited abroad and likewise bearing a counterfeit mark are introduced into the Empire, they shall be prohibited entry and returned to their owner.

Goods whose proprietor is not known shall be kept at the custom house one year.

On the expiration of the year, if these goods shall not be susceptible of being kept one year more, they shall be placed on sale, by way of adjudication, before they have deteriorated; the counterfeit marks thereto affixed shall previously be destroyed.

The proceeds of the sale of these articles, deduction being made for storage, shall be retained at the custom house until the end of the second year, to be forwarded to the owner on his petition; in default of claim prior to said date, they shall be deposited in the Treasury of the Administration for the profit of this latter.

Goods seized at the customs, goods of which it would be impossible to destroy the mark and that shall not be claimed during one full year by their owner, shall be destroyed.

ART. 24. The Regulation regarding marks dated 24 Djemaz-ul-akhir 1288, as well as its supplement of 29 Rebul-akhir 1289, are annulled counting from the date of the promulgation of the present Regulation.

ARTICLE ADDITIONAL TO THE REGULATION REGARDING MARKS OF MANUFACTURE AND COMMERCE, BECOMING EFFECTIVE IN ACCORDANCE WITH IMPERIAL IRADÉ PROMULGATED TO THIS EFFECT ON AUGUST 12, 1317*

If the owners make petition therefor, there shall be delivered a duplicate of marks certificates for which have been obtained.

There shall be collected a fee of twenty-five piastres for each duplicate.

* Mohammedan calendar.

UGANDA PROTECTORATE

ORDINANCE NO. 12 OF JULY 1, 1912

Short Title

1. This Ordinance may be cited as "The Patents, Designs and Trade Marks Ordinance, 1912,"* and shall come into operation on such date as the Governor shall by notice prescribe.

Appointment of Registrar

2. The Governor may appoint a Registrar of Patents, Designs and Trade Marks (in this Ordinance called the Registrar) with an office to be called the Registry of Patents, Designs and Trade Marks (in this Ordinance called the Registry) and until such appointment be made the Principal Registrar of Documents shall be and perform the duties of such Registrar, and the office of the said Principal Registrar of Documents shall be such Registry. The term "Registrar" shall include any Deputy Registrar or person acting under the authority of such Registrar.

Register

3. There shall be kept at the Registry a book called . . . "The Register of Trade Marks."

. . . . . .

To whom certificates of Registration may be granted

5. A certificate of registration . . . of any trade mark may be granted in the Protectorate to any person who in the United Kingdom is the registered proprietor of such . . . trade mark or to any person to whom all interest in such . . . trade mark in respect of the Protectorate has been assigned.

Procedure

6. Every application . . . for the registration of a . . . trade mark under this Ordinance shall be addressed to the Registrar and there shall be transmitted with such application so far as the same shall be applicable —

. . . . . .

(3) Two copies of any drawing in relation to the . . . trade mark.

. . . . . .

(5) A block containing a representation of the trade mark of a size suitable for insertion in the *Gazette*.

(6) An affidavit that the applicant . . . is the registered

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* Provisions not relating to trade marks are omitted.

proprietor in the United Kingdom, of the . . . trade mark for which protection is asked, or that he is the person to whom all interest in such . . . trade mark in respect of the Protectorate has been assigned.

Applications to be filed and recorded

7. The Registrar shall file every such application and the enclosures thereto in the Register, and shall cause to be made in the proper Register in the prescribed manner an entry of the nature of the . . . trade mark and of the filing of the application and of the enclosures thereto.

Issue of certificates of registration

8. A certificate in duplicate in the prescribed form of the entry in the Register shall thereupon be made under the hand of the Governor and of the Registrar and under the seal of the Protectorate. One copy of such certificate shall be issued to the applicant and one copy shall be filed by the Registrar. Such certificate shall be the . . . certificate of the registration of the . . . trade mark, . . . and shall confer upon the person obtaining the same or other the lawful holder thereof within the limits of the Protectorate every right, title and advantage which the holder of the . . . certificate of the registration of a . . . trade mark has in England in respect of such . . . trade mark, provided that such certificate shall be null and void whenever the . . . certificate to which it refers shall finally cease in England.

Order affecting Registrar may be made by the High Court

9. An order requiring the Registrar to do or abstain from doing anything under this Ordinance may be made by a Judge of the High Court on a summons in Chambers.

Certificate of Registrar to be evidence

10. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Ordinance, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Sealed copies to be evidence

11. Printed or written copies or extracts purporting to be certified by the Registrar and sealed with the seal of the Registry of or from registers and other books or documents kept there shall be admitted in evidence in all Courts in the Protectorate, and in all proceedings, without further proof or a production of the original.

High Court to afford all relief

12. (1) The High Court shall have power, in accordance with the provisions of the Patents, Designs, and Trade Marks Acts of England, to grant, either absolutely or on such terms and conditions as shall seem just, all such remedies as any person may appear to be entitled to in respect of either claim to or defence of any right, title or interest in relation to any . . . registration in force in the Protectorate under a certificate granted under this Ordinance: Provided always that no such act passed after the date of this Ordinance coming into force shall apply to the Protectorate until it shall be applied by Ordinance.

(2) Provided that nothing in this section contained shall entitle the holder of any certificate of entry to recover damages for infringements of any . . . trade mark happening prior to the actual date of the grant of such certificate of entry.

"Passing off" action

13. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Offences

14. If any person makes or causes to be made a false entry in any register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable on conviction to imprisonment with or without hard labour for a term not exceeding two years, or to a fine, or both.

15. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family uses in connection with any trade, business, calling, or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be liable on conviction to a fine not exceeding three hundred rupees: Provided that nothing in this sub-section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing

any such arms, device, emblem, or title to continue to use such trade mark.

Offences

16. . . . . .

. . . . . .

(3) Any person who represents any trade mark as registered, which is not so, shall be liable for every offence on conviction to a fine not exceeding Rs. 75.

A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any word or words expressing or implying that registration has been obtained for the trade mark.

(4) Provided always that if the person alleged to have committed an offence under this Section shall show to the satisfaction of the Court that the said . . . trade mark is in fact . . . registered under the provisions of the law in force in England or the East Africa Protectorate, such representation or sale shall not constitute an offence under this section.

Offence

17. If any person uses on his place of business or any document issued by him or otherwise the words "Registry of Patents, Designs or Trade Marks" or any other words suggesting that his place of business is officially connected with, or is, the Registry of Patents, Designs or Trade Marks, he shall be liable on conviction to a fine not exceeding Rs. 300.

Prohibition of use of emblem of red cross on white ground, &c.

18. (1) It shall not be lawful for any person to use for the purposes of his trade or business, or for any other purpose whatsoever, without the authority in writing of the Army Council of Great Britain, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland, or the words "Red Cross" or "Geneva Cross," and if any person acts in contravention of this provision, he shall be guilty of an offence against this Ordinance, and shall be liable on conviction to a fine not exceeding Rs. 150, and to forfeit any goods upon or in connection with which the emblem or words were used.

(2) Where a company or society is guilty of any such contravention, without prejudice to the liability of the company or society, every director, manager, secretary and other officer of the company or society who is knowingly a party to the contravention shall be guilty of an offence against this Ordinance and liable on conviction to the like penalty.

(3) Nothing in this section shall affect the right (if any) of the proprietor of a trade mark registered under the English Acts before the passing of this Ordinance, and containing any such emblem or words, to continue to use such trade mark for a period of four years from the 18th August, 1911, or such part of the said four years as the said trade mark shall be duly registered under the English Acts.

(4) Proceedings under this Section shall not be instituted without the consent of the Crown Advocate.

Report of Registrar

19. The Registrar shall on the first day of April in every year issue a report respecting the execution by him of this Ordinance.

Power to make rules

20. The Governor may make rules (1) prescribing the forms to be used under this Ordinance, (2) providing for and regulating the search and inspection of the Registers, (3) otherwise regulating the practice of registration under this Ordinance, (4) prescribing the fees and fixing the charges to be made for any act, matter or thing under this Ordinance to be done or observed, and (5) generally for the better carrying into effect of the provisions of this Ordinance.

UNITED STATES OF AMERICA

ACT OF FEBRUARY 20, 1905 (AS AMENDED)

An Act to Authorize the Registration of Trade Marks Used in Commerce with Foreign Nations or Among the several States or with Indian Tribes and to Protect the Same

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the owner of a trade mark used in commerce with foreign nations, or among the several States, or with Indian tribes, provided such owner shall be domiciled within the territory of the United States, or resides in or is located in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade mark by complying with the following requirements: First, by filing in the Patent Office an application therefor, in writing, addressed to the Commissioner of Patents, signed by the applicant, specifying his name, domicile, location, and citizenship; the class of merchandise and the particular description of goods comprised in such class to which the trade mark is appropriated; a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade mark has been used; a description of the trade mark itself shall be included, if desired by the applicant or required by the commissioner, provided such description is of a character to meet the approval of the commissioner. With this statement shall be filed a drawing of the trade mark, signed by the applicant, or his attorney, and such number of specimens of the trade marks as actually used as may be required by the Commissioner of Patents. Second, by paying into the Treasury of the United States the sum of ten dollars, and otherwise complying with the requirements of this act and such regulations as may be prescribed by the Commissioner of Patents.

Sec. 2. That the application prescribed in the foregoing section, in order to create any right whatever in favor of the party filing it, must be accompanied by a written declaration verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, to the effect that the applicant believes himself or the firm, corporation, or association in whose behalf he makes the application to be the owner of the trade mark sought to be registered, and that no other

person, firm, corporation, or association, to the best of the applicant's knowledge and belief, has the right to use such trade mark in the United States, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade mark is used in commerce among the several States, or with foreign nations, or with Indian tribes, and that the description and drawing presented truly represent the trade mark sought to be registered. If the applicant resides or is located in a foreign country, the statement required shall, in addition to the foregoing, set forth that the trade mark has been registered by the applicant, or that an application for the registration thereof has been filed by him in the foreign country in which he resides or is located, and shall give the date of such registration, or the application therefor, as the case may be, except that in the application in such cases it shall not be necessary to state that the mark has been used in commerce with the United States or among the States thereof. The verification required by this section may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge, or magistrate having an official seal and authorized to administer oaths in the foreign country in which the applicant may be whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States.

SEC. 3. That every applicant for registration of a trade mark, or for renewal of registration of a trade mark, who is not domiciled within the United States, shall, before the issuance of the certificate of registration, as hereinafter provided for, designate, by a notice in writing, filed in the Patent Office, some person residing within the United States on whom process or notice of proceedings affecting the right of ownership of the trade mark of which such applicant may claim to be the owner, brought under the provisions of this act or under other laws of the United States, may be served, with the same force and effect as if served upon the applicant or registrant in person. For the purposes of this act it shall be deemed sufficient to serve such notice upon such applicant, registrant, or representative by leaving a copy of such process or notice addressed to him at the last address of which the Commissioner of Patents has been notified.

SEC. 4. That an application for registration of a trade mark filed in this country by any person who has previously regularly filed in any foreign country which, by treaty, conven-

tion, or law, affords similar privileges to citizens of the United States an application for registration of the same trade mark shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which application for registration of the same trade mark was first filed in such foreign country: Provided, that such application is filed in this country within four months from the date on which the application was first filed in such foreign country: And provided, that certificate of registration shall not be issued for any mark for registration of which application has been filed by an applicant located in a foreign country until such mark has been actually registered by the applicant in the country in which he is located.

SEC. 5. That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade mark on account of the nature of such mark unless such mark—

(a) Consists of or comprises immoral or scandalous matter.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States or any simulation thereof, or of any State or municipality or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem, or of any name, distinguishing mark, character, emblem, colors, flag, or banner adopted by any institution, organization, club, or society which was incorporated in any State in the United States prior to the date of the adoption and use by the applicant: Provided, that said name, distinguishing mark, character, emblem, colors, flag, or banner was adopted and publicly used by said institution, organization, club, or society prior to the date of adoption and use by the applicant: Provided, that trade marks which are identical with a registered or known trade mark owned and in use by another and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade mark owned and in use by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers shall not be registered: Provided, that no mark which consists merely in the name of an individual, firm, corporation, or association not written, printed, impressed, or woven in some particular or distinctive manner, or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms

of this Act: Provided further, that no portrait of a living individual may be registered as a trade mark except by the consent of such individual, evidenced by an instrument in writing: And provided further, that nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several States or with Indian tribes which was in actual and exclusive use as a trade mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding February twentieth, nineteen hundred and five: Provided further, that nothing herein shall prevent the registration of a trade mark otherwise registrable because of its being the name of the applicant or a portion thereof.

SEC. 6. That on the filing of an application for registration of a trade mark which complies with the requirements of this act, and the payment of the fees herein provided for, the Commissioner of Patents shall cause an examination thereof to be made; and if on such examination it shall appear that the applicant is entitled to have his trade mark registered under the provisions of this act, the commissioner shall cause the mark to be published at least once in the Official Gazette of the Patent Office. Any person who believes he would be damaged by the registration of a mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication of the mark sought to be registered, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section two of this act. An opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing. If no notice of opposition is filed within said time, the commissioner shall issue a certificate of registration therefor, as hereinafter provided for. If on examination an application is refused, the commissioner shall notify the applicant, giving him his reasons therefor.

SEC. 7. That in all cases where notice of opposition has been filed the Commissioner of Patents shall notify the applicant thereof and the grounds therefor.

Whenever application is made for the registration of a trade mark which is substantially identical with a trade mark appropriated to goods of the same descriptive properties, for which a certificate of registration has been previously issued to another, or for registration of which another has previously made application, or which so nearly resembles such trade mark,

or a known trade mark owned and used by another, as, in the opinion of the commissioner, to be likely to be mistaken therefor by the public, he may declare that an interference exists as to such trade mark, and in every case of interference or opposition to registration he shall direct the examiner in charge of interferences to determine the question of the right of registration to such trade mark, and of the sufficiency of objections to registration, in such manner and upon such notice to those interested as the commissioner may by rules prescribe.

The commissioner may refuse to register the mark against the registration of which objection is filed, or may refuse to register both of two interfering marks, or may register the mark, as a trade mark, for the person first to adopt and use the mark, if otherwise entitled to register the same, unless an appeal is taken, as hereinafter provided for, from his decision, by a party interested in the proceeding, within such time (not less than twenty days) as the commissioner may prescribe.

SEC. 8. That every applicant for the registration of a trade mark, or for the renewal of the registration of a trade mark, which application is refused, or a party to an interference against whom a decision has been rendered, or a party who has filed a notice of opposition as to a trade mark, may appeal from the decision of the examiner in charge of trade marks, or the examiner in charge of interferences, as the case may be, to the commissioner in person, having once paid the fee for such appeal.

SEC. 9. That if an applicant for registration of a trade mark, or a party to an interference as to a trade mark, or a party who has filed opposition to the registration of a trade mark, or party to an application for the cancellation of the registration of a trade mark, is dissatisfied with the decision of the Commissioner of Patents, he may appeal to the court of appeals of the District of Columbia, on complying with the conditions required in case of an appeal from the decision of the commissioner by an applicant for patent, or a party to an interference as to an invention, and the same rules of practice and procedure shall govern in every stage of such proceedings, as far as the same may be applicable.

SEC. 10. That every registered trade mark, and every mark for the registration of which application has been made, together with the application for registration of the same, shall be assignable in connection with the good will of the business in which the mark is used. Such assignment must be by an instrument in writing and duly acknowledged according to the laws of the country or State in which the same is executed; any such

assignment shall be void as against any subsequent purchaser for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from date thereof. The commissioner shall keep a record of such assignments.

SEC. 11. That certificates of registration of trade marks shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Commissioner of Patents, and a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose. The certificate shall state the date on which the application for registration was received in the Patent Office. Certificates of registration of trade marks may be issued to the assignee of the applicant, but the assignment must first be entered of record in the Patent Office.

Written or printed copies of any records, books, papers, or drawings relating to trade marks belonging to the Patent Office, and of certificates of registration, authenticated by the seal of the Patent Office and certified by the commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor and paying the fee required by law shall have certified copies thereof.

SEC. 12. That a certificate of registration shall remain in force for twenty years, except that in the case of trade marks previously registered in a foreign country such certificates shall cease to be in force on the day on which the trade mark ceases to be protected in such foreign country, and shall in no case remain in force more than twenty years, unless renewed. Certificates of registration may be from time to time renewed for like periods on payment of the renewal fees required by this act, upon request by the registrant, his legal representatives, or transferees of record in the Patent Office, and such request may be made at any time not more than six months prior to the expiration of the period for which the certificates of registration were issued or renewed. Certificates of registration in force at the date at which this act takes effect shall remain in force for the period for which they were issued, but shall be renewable on the same conditions and for the same periods as certificates issued under the provisions of this act, and when so renewed shall have the same force and effect as certificates issued under this act.

SEC. 13. That whenever any person shall deem himself injured by the registration of a trade mark in the Patent Office he may at any time apply to the Commissioner of Patents to

cancel the registration thereof. The commissioner shall refer such application to the examiner in charge of interferences, who is empowered to hear and determine this question and who shall give notice thereof to the registrant. If it appear after a hearing before the examiner that the registrant was not entitled to the use of the mark at the date of his application for registration thereof, or that the mark is not used by the registrant, or has been abandoned, and the examiner shall so decide, the commissioner shall cancel the registration. Appeal may be taken to the commissioner in person from the decision of examiner of interferences.

SEC. 14. That the following shall be the rates for trade mark fees:

On filing each original application for registration of a trade mark, ten dollars: Provided, that an application for registration of a trade mark pending at the date of the passage of this act, and on which certificate of registration shall not have issued at such date, may, at the option of the applicant, be proceeded with and registered under the provisions of this act without the payment of further fee.

On filing each application for renewal of the registration of a trade mark, ten dollars.

On filing notice of opposition to the registration of a trade mark, ten dollars.

On an appeal from the examiner in charge of trade marks to the Commissioner of Patents, fifteen dollars.

On an appeal from the decision of the examiner in charge of interferences, awarding ownership of a trade mark or canceling the registration of a trade mark, to the Commissioner of Patents, fifteen dollars.

For certified and uncertified copies of certificates of registration and other papers, and for recording transfers and other papers, the same fees as required by law for such copies of patents and for recording assignments and other papers relating to patents.

SEC. 15. That sections forty-nine hundred and thirty-five and forty-nine hundred and thirty-six of the Revised Statutes, relating to the payment of patent fees and to the repayment of fees paid by mistake, are hereby made applicable to trade mark fees.

SEC. 16. That the registration of a trade mark under the provisions of this act shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade

mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colorable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

SEC. 17. That the circuit and territorial courts of the United States and the supreme court of the District of Columbia shall have original jurisdiction, and the circuit courts of appeal of the United States and the court of appeals of the District of Columbia shall have appellate jurisdiction of all suits at law or in equity respecting trade marks registered in accordance with the provisions of this act, arising under the present act, without regard to the amount in controversy.

SEC. 18. That writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this act in the same manner as provided for patent cases by the act creating the circuit court of appeals.

SEC. 19. That the several courts vested with jurisdiction of cases arising under the present act shall have power to grant injunctions, according to the course and principles of equity, to prevent the violation of any right of the owner of a trade mark registered under this act, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for wrongful use of a trade mark the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction. The court shall have the same power to increase such damages, in its discretion, as is given by section sixteen of this act for increasing damages found by verdict in actions of law; and in assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost which are claimed.

SEC. 20. That in any case involving the rights to a trade mark registered in accordance with the provisions of this act,

in which the verdict has been found for the plaintiff, or an injunction issued, the court may order that all labels, signs, prints, packages, wrappers, or receptacles in the possession of the defendant, bearing the trade mark of the plaintiff or complainant, or any reproduction, counterfeit, copy, or colorable imitation thereof, shall be delivered up and destroyed. Any injunction that may be granted upon hearing, after notice to the defendant, to prevent the violation of any right of the owner of a trade mark registered in accordance with the provisions of this act, by any circuit court of the United States, or by a judge thereof, may be served on the parties against whom such injunction may be granted anywhere in the United States where they may be found, and shall be operative, and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other circuit court, or judge thereof, in the United States, or by the Supreme Court of the District of Columbia, or a judge thereof. The said courts or judges thereof shall have jurisdiction to enforce said injunction, as herein provided, as fully as if the injunction had been granted by the circuit court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

SEC. 21. That no action or suit shall be maintained under the provisions of this act in any case when the trade mark is used in unlawful business, or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or has been abandoned, or upon any certificate of registration fraudulently obtained.

SEC. 22. That whenever there are interfering registered trade marks, any person interested in any one of them may have relief against the interfering registrant, and all persons interested under him, by suit in equity against the said registrant; and the court, on notice to adverse parties and other due proceedings had according to the course of equity, may adjudge and declare either of the registrations void in whole or in part according to the interest of the parties in the trade mark, and may order the certificate of registration to be delivered up to the Commissioner of Patents for cancellation.

SEC. 23. That nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade mark might have had if the provisions of this act had not been passed.

SEC. 24. That all applications for registration pending in the office of the Commissioner of Patents at the time of the passage of this act may be amended with a view to bringing them, and the certificate issued upon such applications, under its provisions, and the prosecution of such applications may be proceeded with under the provisions of this act.

SEC. 25. That any person who shall procure registration of a trade mark, or entry thereof, in the office of the Commissioner of Patents by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable to pay any damages sustained in consequence thereof to the injured party, to be recovered by an action on the case.

SEC. 26. That the Commissioner of Patents is authorized to make rules and regulations, not inconsistent with law, for the conduct of proceedings in reference to the registration of trade marks provided for by this act.

SEC. 27. That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade mark registered in accordance with the provisions of this act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade mark, issued in accordance with the provisions of this act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade mark; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each

collector or other proper officer of customs.

SEC. 28. That it shall be the duty of the registrant to give notice to the public that a trade mark is registered, either by affixing thereon the words "Registered in U. S. Patent Office," or abbreviated thus, "Reg. U. S. Pat. Off.," or when, from the character or size of the trade mark, or from its manner of attachment to the article to which it is appropriated, this can not be done, then by affixing a label containing a like notice to the package or receptacle wherein the article or articles are inclosed; and in any suit for infringement by a party failing so to give notice of registration no damages shall be recovered, except on proof that the defendant was duly notified of infringement and continued the same after such notice.

SEC. 29. That in construing this act the following rules must be observed, except where the contrary intent is plainly apparent from the context thereof: The United States includes and embraces all territory which is under the jurisdiction and control of the United States. The word "States" includes and embraces the District of Columbia, the Territories of the United States, and such other territory as shall be under the jurisdiction and control of the United States. The terms "person" and "owner," and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this act, include a firm, corporation, or association as well as a natural person. The term "applicant" and "registrant" embrace the successors and assigns of such applicant or registrant. The term "trade mark" includes any mark which is entitled to registration under the terms of this act, and whether registered or not, and a trade mark shall be deemed to be "affixed" to an article when it is placed in any manner in or upon either the article itself or the receptacle or package or upon the envelope or other thing in, by, or with which the goods are packed or inclosed or otherwise prepared for sale or distribution.

SEC. 30. That this act shall be in force and take effect April first, nineteen hundred and five. All acts and parts of acts inconsistent with this act are hereby repealed except so far as the same may apply to certificates of registration issued under the act of Congress approved March third, eighteen hundred and eighty-one, entitled "An act to authorize the registration of trade marks and protect the same," or under the act approved August fifth, eighteen hundred and eighty-two, entitled "An act relating to the registration of trade marks."

ACT OF MAY 4, 1906

AN ACT TO AMEND THE LAWS OF THE UNITED STATES RELATING TO THE REGISTRATION OF TRADE MARKS

. . . . . .

SEC. 2. That the Commissioner of Patents shall establish classes of merchandise for the purpose of trade mark registration, and shall determine the particular descriptions of goods comprised in each class. On a single application for registration of a trade mark the trade mark may be registered at the option of the applicant for any or all goods upon which the mark has actually been used comprised in a single class of merchandise, provided the particular descriptions of goods be stated.

SEC. 3. That any owner of a trade mark who shall have a manufacturing establishment within the territory of the United States shall be accorded, so far as the registration and protection of trade marks used on the products of such establishment are concerned, the same rights and privileges that are accorded to owners of trade marks domiciled within the territory of the United States by the act entitled "An act to authorize the registration of trade marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same," approved February twentieth, nineteen hundred and five.

SEC. 4. That this act shall take effect July first, nineteen hundred and six.

ACT OF MARCH 19, 1920

AN ACT TO GIVE EFFECT TO CERTAIN PROVISIONS OF THE CONVENTION FOR THE PROTECTION OF TRADE MARKS AND COMMERCIAL NAMES, MADE AND SIGNED IN THE CITY OF BUENOS AIRES, IN THE ARGENTINE REPUBLIC, AUGUST 20, 1910, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Commissioner of Patents shall keep a register of (a) all marks communicated to him by the international bureaus provided for by the convention for the protection of trade marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, in connection with which the fee of $50 gold for the international registration established by article 2 of that convention has been paid, which register shall show a facsimile of the mark; the name and resi-

dence of the registrant; the number, date, and place of the first registration of the mark, including the date on which application for such registration was filed and the term of such registration, a list of goods to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark.

(b) All other marks not registerable under the Act of February 20, 1905, as amended, except those specified in paragraphs (a) and (b) of section 5 of that Act, but which have been in bona fide use for not less than one year in interstate or foreign commerce, or commerce with the Indian tribes by the proprietor thereof, upon or in connection with any goods of such proprietor upon which a fee of $10 has been paid to the Commissioner of Patents and such formalities as required by the said commissioner have been complied with: Provided, that trade marks which are identical with a known trade mark owned and used in interstate and foreign commerce, or commerce with the Indian tribes by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers, shall not be placed on this register.

SEC. 2. That whenever any person shall deem himself injured by the inclusion of a trade mark on this register, he may at any time apply to the Commissioner of Patents to cancel the registration thereof. The commissioner shall refer such application to the examiner in charge of interferences, who is empowered to hear and determine this question, and who shall give notice thereof to the registrant. If it appears after a hearing before the examiner that the registrant was not entitled to the exclusive use of the mark, at or since the date of his application for registration thereof, or that the mark is not used by the registrants or has been abandoned, and the examiner shall so decide, the commissioner shall cancel the registration. Appeal may be taken to the commissioner in person from the decision of the examiner in charge of interferences.

SEC. 3. That any person who shall wilfully and with intent to deceive, affix, or annex, or use in connection with any article or articles of merchandise, or any container or containers of the same, a false designation of origin, including words or other symbols, tending to falsely identify the origin of the merchandise, and shall then cause such merchandise to enter into interstate or foreign commerce, and any person who shall knowingly cause or procure the same to be transported in interstate or foreign commerce or commerce with Indian tribes, or shall knowingly deliver the same to any carrier to be so transported,

shall be liable to an action at law for damages and to an action in equity for an injunction, at the suit of any person, firm, or corporation doing business in the locality falsely indicated as that of origin, or in the region in which such locality is situated, or at the suit of any association of such persons, firms, or corporations.

SEC. 4. That any person who shall without the consent of the owner thereof reproduce, counterfeit, copy, or colorably imitate any trade mark on the register provided by this Act, and shall affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colorable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

SEC. 5. That it shall be the duty of a registrant under this Act of a mark falling within class (a) of section 1, to comply with the law of the country in which his original registration took place, in respect to giving notice to the public that the trade mark is registered, in connection with the use of such trade mark in the United States of America, and in any suit for infringement by a party failing to do this, no damages shall be recovered except on proof that the defendant was duly notified of the infringement and continued the same after such notice.

SEC. 6. That the provisions of sections 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, and 28 (as to class (b) marks only) of the Act approved February 20, 1905, entitled "An Act to authorize the registration of trade marks used in commerce with the foreign nations or among the several states, or with Indian tribes, and to protect the same," as amended to date, and the provisions of section 2 of the Act entitled "An Act to amend the laws of the United States relating to the registration of trade marks," approved May 4, 1906, are hereby made applicable to marks placed on the register provided for by section 1 of this Act.

SEC. 7. That written or printed copies of any records, books, papers, or drawings belonging to the Patent Office and

relating to trade marks placed on the register provided for by this Act, when authenticated by the seal of the Patent Office and certified by the commissioner thereof, shall be evidence in all cases wherein the originals could be evidenced, and any person making application therefor and paying the fee required by law shall have certified copies thereof.

SEC. 8. That the same fees shall be required for certified and uncertified copies of papers and for records, transfers, and other papers, under this Act, as are required by law for such copies of patents and for recording assignments and other papers relating to patents.

On filing an appeal under this Act to the Commissioner of Patents from the decision of the examiner in charge of interferences, awarding ownership of a trade mark, canceling or refusing to cancel the registration of a trade mark, a fee of $15 shall be payable.

SEC. 9. That section 5 of the Trade Mark Act of February 20, 1905, being Thirty-third Statutes at Large, page 725, as amended by Thirty-fourth Statutes at Large, page 1251, Thirty-sixth Statutes at Large, page 918, Thirty-seventh Statutes at Large, page 649, is hereby amended by adding the following words thereto: "And if any person or corporation shall so have registered a mark upon the ground of said use for ten years preceding February 20, 1905, as to certain articles or classes of articles to which said mark shall have been applied for said period, and shall have thereafter and subsequently extended his business so as to include other articles not manufactured by said applicant for ten years next preceding February 20, 1905, nothing herein shall prevent the registration of said trade mark in the additional classes to which said new additional articles manufactured by said person or corporation shall apply, after said trade mark has been used on said article in interstate or foreign commerce or with the Indian tribes for at least one year provided another person or corporation has not adopted and used previously to its adoption and use by the proposed registrant, and for more than one year such trade mark or one so similar as to be likely to deceive in such additional class or classes."

URUGUAY

LAW OF JULY 13, 1909

CHAPTER I

Ownership of Marks

Article 1. There may be used as marks the denomination of articles or the names of persons in a distinctive form, emblems, monograms, engravings or prints, seals, vignettes and reliefs, ornamental borders, fancy words or names, letters or numerals of a special design, forming a combination, the receptacles or wrappings of articles and any other sign by which it is desired to distinguish the manufactures of a factory, the articles of a line of business, or the products of the agricultural, mining, lumbering or cattle raising industries.

Art. 2. The mark may be placed on the receptacles or wrappings or on the articles themselves that it is desired to distinguish.

Art. 3. For the purposes of this law the following may not be considered as marks:

1) Letters, words, names, coats of arms or distinctive designations that the authorities of the State or the Municipalities use or should use;

2) The form that is given to products, unless it be more useful or convenient than others for the kind of business or industry to which it is applied;

3) The color of the products and that of their receptacles.

There may be used, however, as marks, the combinations of colors of the receptacles:

4) Technical, commercial or common terms that are used to express qualities or attributes of the products;

5) Terms or phrases which have passed into general usage, and signs that are not fanciful, that is to say, that do not present characteristics of novelty and specialty;

6) Designations usually employed to indicate the nature of the products, or the class, genus or species to which they belong;

7) Designs or expressions contrary to morals;

8) Caricatures, portraits, designs or expressions that tend to ridicule ideas, persons or objects worthy of respect and consideration;

9) Portraits or names of living persons, unless their consent has been obtained, and of persons that have died, unless the consent is obtained of their relatives within the fourth degree

of consanguinity and the second by marriage;

10) Letters, words, names, coats of arms or distinctives that foreign States use or should use, unless their commercial use is authorized by a certificate issued by the proper office of the State interested;

11) Words similar to a commercial name or to a name known in relation to determined products;

12) Words, signs or distinctives that imply an intention to compete unfairly.

ART. 4. The exclusive ownership of a mark, as also the right to oppose the use of any other that directly or indirectly may produce confusion between products shall belong to the merchant or manufacturer that has complied with the requirements of this law.

ART. 5. The exclusive ownership of a mark shall be acquired solely in relation to the article for which it has been applied for.

ART. 6. The use of a mark is optional. However, it may be obligatory when the necessities of the public welfare demand it.

ART. 7. The ownership of a mark shall pass to the heirs, and it may be transferred by contract or by the terms of a last will.

ART. 8. Assignment or sale of the establishment includes that of the mark, in the absence of stipulation to the contrary, and the assignee shall have the right to use the mark that distinguishes it, even if it be a name, in the same manner as the assignor, without other restrictions than those expressly imposed in the deed of sale or assignment.

ART. 9. The transfer of a mark shall be authenticated in the Office in which the mark was registered, in order to acquire the right to use it.

ART. 10. The registration of marks is attributive of ownership and no one can enforce exclusive rights to a mark without producing the respective certificate issued by the Minister of Industry.

ART. 11. Notwithstanding the provision contained in the previous article, any person that may have an unregistered mark in use in the country or whose registration has lapsed may oppose a registration that a third party attempts to make of the same mark.

If the third party shall have effected the registration and obtained the respective proofs of same, the persons indicated in the preceding paragraph may apply to the Executive Power for the annulment of the registration or registrations effected

to the prejudice of his prior rights of user.

Upon the institution of the action for annulment there shall be produced or indicated the proofs which substantiate his prior rights of user to the registration unlawfully effected by the third party.

The term in which to apply for annulment shall be two years from the date of the registration whose annulment is applied for, which term having passed, no objection shall be admitted against the registration effected in the Register. Application may also be made for the annulment of a registration effected contrary to the provisions of Art. 3 of this law.

From the decision of the Executive Power—which shall be provisionally complied with—appeal may be made within the period of sixty days, by instituting the proper action before a competent judge.

The administrative proceedings shall act as a stay to the provision laid down in paragraph 4 of this article.

ART. 12. The protection which the registration of a mark affords shall last ten years, it being possible to prolong this period for equal terms each time that it expires or is about to expire. To obtain these prolongations the legal procedure shall be followed and the proper fee shall be paid in accordance with Art. 26.

The merchant or manufacturer who allows the term of ten years to expire without applying for the renewal of the registration in the Register may not invoke in his favor the benefits which the provisions of this present law accord.

In the two years following the expiry of the term of ten years laid down in paragraph 1, the person who had registered it in his name or his legal representative alone may apply for the renewal of the registration of the mark.

All without prejudice to what is provided for in the preceding article.

ART. 13. The right to property in a mark shall cease:

1) Upon application by the interested party.

2) When the nullity of the grant of a mark is declared by the competent authorities.

ART. 14. When the extinction of a mark is effected by any of the causes mentioned in the preceding article, the fact shall be published in the form indicated in Art. 18.

CHAPTER II

FORMALITIES FOR ACQUIRING THE OWNERSHIP OF MARKS

ART. 15. Whoever shall desire to obtain the ownership of a mark of manufacture, commerce, or agriculture, shall apply

for it to the Ministry of Industry, Labor and Public Instruction, proving that he is engaged in the commerce or industry.

The presentation of the Certificate of Commercial Matriculation shall in each case be sufficient to prove it.

For the registration of foreign marks there shall be required the presentation of the certificate of registration in the country of origin or substantiating documents proving all that is required in the preceding paragraph for the registration of national marks.

ART. 16. The application for a mark shall also be accompanied by:

1) Three facsimiles of the mark of which it is desired to make use;

2) A duplicate description of the mark, if it consists of figures or emblems, it being necessary to indicate the class of articles for which they are intended, and whether they will be applied to products of manufacture, of the earth, or to objects of commerce;

3) By a receipt proving that there has been deposited in the General Treasury the amount of the prescribed fee;

4) By a power or letter of attorney, duly legalized if they are issued abroad;

5) By the authorization of the persons indicated in paragraph 9 of Art. 3.

ART. 17. The applications that are presented shall be proved by means of a brief statement which gives a résumé of its contents and the date and hour of presentation, in a book, the leaves of which shall be numbered and signed by the Minister.

ART. 18. The statement to which the preceding article refers having been drawn up, there shall be officially published at the expense of the interested parties an extract from the application, the date of its presentation, the name of the party interested, and a cut of the mark, for which there shall be required from the applicant the corresponding *cliché* (electrotype).

The publication shall be made for fifteen consecutive days in the *Diario Oficial.*

ART. 19. If, ten days having elapsed after the last publication prescribed by the preceding article, no one has presented himself to oppose the grant, and if like or similar marks have not previously been granted under the conditions named in Arts. 5 and 6 of this law, the mark applied for shall be registered and the certificate of its ownership shall be issued.

ART. 20. The certificate of the mark that the Ministry of Industry, Labor and Public Instruction shall issue shall con-

sist in a certified copy of the decree that granted it, accompanied by a duplicate of the description and drawings; it shall be issued in the name of the Republic, under the authority of the Government, and shall bear the signature of the Chief of the respective Section of said Ministry.

ART. 21. In cases in which the registration of a mark is not effected, the fee paid shall be returned to the interested party.

ART. 22. Judicial decisions having the authority of *res adjudicatæ* shall be officially notified to the Ministry within the period of ten days, by the delivery of a certified copy of the said decisions.

ART. 23. The Ministry of Industry shall keep a book in which shall be copied all decisions which are rendered in regard to marks, granting or refusing the registration, or deciding incidental questions.

ART. 24. Marks for which certificates are issued, as also the applications and descriptions presented, shall be filed in the Ministry of Industry. In case of litigation there shall be exhibited before the competent judge the design of the mark with a certified copy of the description of it, or of any other exhibit concerning the question.

ART. 25. The marks, as also their descriptions, shall remain in the Ministry at the disposition of all that desire to examine them.

ART. 26. For the registration and certificate of a mark, whatever may be its origin, there shall be paid a fee of ten pesos. The same fee shall be paid for the registration and certificate of transfer.

For certified copies of certificates that are applied for hereafter there shall be paid ten pesos in addition to the value of the stamped paper on which they are issued.

For the registration and certificate of a renewed mark there shall be paid twenty-five pesos.

ART. 27. In order that foreign marks may enjoy the guarantees which this law accords, they must be registered in accordance with its provisions.

The owners thereof or their duly authorized agents are the only ones that may apply for the registration.

CHAPTER III

MANUFACTURING, COMMERCIAL AND AGRICULTURAL NAMES

ART. 28. The name of a merchant or manufacturer, or of a firm, or the title or designation of a house or establishment which deals in determined articles, shall constitute industrial

property for the purposes of this law.

ART. 29. If a merchant or manufacturer desires to engage in an industry already carried on by another person of the same name or with the same conventional designation, he shall adopt a clear modification which shall make this name or designation visibly different from that which the preexisting house uses.

ART. 30. If the party injured by the use of a name of manufacture or commerce, or of the mining, agricultural or lumbering industries, does not make any complaint within the term of two years from the day on which it began to be used by another, he shall lose his right to any action.

ART. 31. Joint stock companies shall have the same right to the name which they bear as any individual, and shall be subject to the same limitations.

ART. 32. The right to the exclusive use of a name as industrial property shall terminate with the house of commerce that bears it or with the cessation of the industry to which it belongs.

ART. 33. The registration of a name is not necessary in order to exercise the rights accorded by this law, save in the case in which it forms part of the mark.

CHAPTER IV

PENAL PROVISIONS

ART. 34. He who for the purpose of gain makes, counterfeits, alters or executes a mark registered by another person in the proper Register, shall, upon complaint, be punished by imprisonment of from twelve to fifteen months.

ART. 35. He who with the same motive imitates a mark, design or model under such conditions that the consumer may confuse them with products the marks of which have been duly registered, shall, upon complaint, be punished by imprisonment of from nine to twelve months.

ART. 36. Those who refill with spurious products receptacles bearing the mark of another, or those who refill them with products that do not correspond to the genuine product mentioned in the mark which the receptacle bears, or those who mix genuine products with others extracted or spurious, shall be punished, upon complaint, with imprisonment of from nine to twelve months.

ART. 37. He who knowingly sells or places on sale, or offers to sell or distribute merchandise marked with the marks to which the preceding articles refer, shall be punished, upon complaint, with imprisonment of from six to nine months.

ART. 38. Those, who against the wish of the legitimate owner, use or place genuine marks on sale, shall be punished,

upon complaint, by a fine of from one hundred to two hundred pesos.

ART. 39. Those who sell or place on sale merchandise with a usurped or counterfeit mark shall be obliged to give to the merchant or manufacturer who is the owner thereof complete information in writing in regard to the name and address of those from whom the merchandise has been purchased or procured, as also in regard to the time when the sale commenced, and in case of refusal they may be legally compelled under penalty of being considered accomplices of the guilty party.

ART. 40. Merchandise bearing a counterfeit mark that is found in the possession of the counterfeiter or his agents, shall be confiscated and sold, and the proceeds, after the expenses and indemnities established by this law have been paid, shall be appropriated to the benefit of the public schools of the Department in which the confiscation took place.

ART. 41. Counterfeit marks that are found in possession of the counterfeiter or his agents shall be destroyed, as also the instruments which served especially for the counterfeiting.

ART. 42. Those injured through the violation of the provisions of this law, may bring action for damages and injuries against the authors of the fraud and their accomplices.

The sentences of condemnation shall be published at the expense of the infringer.

ART. 43. No action, civil or criminal, may be brought after three years have elapsed since the commission or repetition of the offence, or after one year from the day on which the owner of the mark had cognizance of the fact for the first time. The acts that interrupt the limitation are those that are determined by Common Law.

ART. 44. The provisions contained in the articles of this chapter shall be applicable to those who unlawfully make use of the name of a merchant, manufacturer or of a firm, of the sign or designation of a commercial or manufacturing house, as established in Arts. 28, 29, 30, 31, 32, and 33 of this law.

ART. 45. The provisions contained in the Penal Code shall be applicable to the offences to which this law refers, provided that they do not conflict with what is expressly established by this law.

CHAPTER V

PROCEDURE

ART. 46. Every owner of a mark of manufacture, commerce or agriculture, to whose knowledge it may come that there are to be found in the Custom House, Post Office or other

Government or private office, labels, capsules, receptacles or any other article similar to those which constitute or belong to his mark, may apply to the competent authority, asking for an attachment on the said articles, and the judge shall grant the request on the responsibility of the petitioner and such security as he shall deem necessary in case the attachment should have been granted without right.

It is optional with the judge to dispense with the security when the applicant is a person of well-known responsibility.

ART. 47. Without prejudice to what is laid down in Art. 39 of this law and other measures that may be taken in the criminal court, the owners of the usurped, counterfeit or imitation marks may, upon their own responsibility, apply to the competent judges, asking that an inventory and description be taken of the merchandise or products which are found bearing said marks in a house of commerce or any other place. The said inventory shall be made by the constable of the court or by any public notary whom the court shall name, by drawing up documents which shall contain a detailed description of the merchandise or products, and which shall be signed by the petitioner if he be present, the constable or notary, in their turn, and by the proprietor of the business or store, or in his absence, by two witnesses.

ART. 48. When several inventories have to be made simultaneously in different places, the judge may appoint for this purpose any public notary and in all cases direct, if he shall believe it necessary, that there shall accompany the constable or his substitute an expert, in order that he may supervise the description of the inventoried merchandise.

ART. 49. If, during the taking of inventory, the explanations provided for by Art. 39 of this law are given, they shall be included in the document.

ART. 50. In order that the order for the inventory and attachment of which the preceding articles treat may be given, the presentation of the certificate of the mark is required.

ART. 51. Fifteen days having elapsed from the effecting of the attachment, the same shall be without effect if the owner of the mark has not instituted the proper action.

ART. 52. The proceedings to which the offences named in Art. 34 and following of this law give rise, shall be conducted according to the procedure laid down by the Code of Criminal Procedure.

ART. 53. Criminal action may not be officially instituted, and shall pertain solely to the interested parties; but, once initiated, it shall be continued by the Government Criminal

Attorney if he think it proper.

ART. 54. The parties injured by violation of the provisions of this law may bring action for damages and injuries against the authors and accomplices of the fraud.

The sentences of condemnation shall be published at the expense of the infringer.

CHAPTER VI

FINAL PROVISIONS

ART. 55. The owners of a foreign mark that has not been registered in the Republic may make use of the actions provided for in Art. 11 of this law and for the purposes there indicated.

ART. 56. The present Office of Marks and Patents is incorporated with the Ministry of Industry, Labor and Public Instruction, and the Executive Power shall direct its operation.

ART. 57. Provisions that conflict with this present law and the Decree of March 1, 1877, are repealed.

ART. 58. The Executive Power shall issue regulations for the enforcement of this law.

ART. 59. Communicate this, etc.

VENEZUELA

LAW OF MAY 24, 1877

ARTICLE 1. Any person or society domiciled in the Republic and any corporation created by National authority, by the States and by the Territories, as well as any person, society, or corporation resident in a foreign country, in which through treaty or agreement there is accorded to Venezuelan citizens the same or analogous rights as regards those that are granted by this law, may obtain the protection or guarantee of any legitimate mark of manufacture or of commerce for the use of which an exclusive concession is held, or which it may be desired to adopt and use for such purpose, provided that there be fulfilled the requisites that the present law contains.

ART. 2. He that aspires to official protection for a mark of manufacture or of commerce shall present at the Ministry of Fomento (Public Industry) an application on stamped paper of the seventh class wherein shall be stated: the name of the applicant, his residence and mercantile domicile, the class of articles or goods that bear or are to bear the mark of manufacture or of commerce, the particular description of the goods or effects comprised in such class to which there is affixed or it is intended to affix the mark, a description of this same with facsimiles in which may be seen its application or the manner in which it is intended to apply it and to use it; and, finally, the time during which the mark shall have been in use, in case its use or application is not solicited for the first time.

ART. 3. Said application must be signed by the applicant or by the person that shall present it, if he includes formal power of attorney that authorizes him on the part of the owner or owners of the mark, it being evidenced at the time in writing that the party that solicits protection for the mark of manufacture or of commerce has the right to its use, and that said mark has semblance with no other analogous mark already registered, so that it might be confused therewith and deceive the public. Likewise, the applicant must give assurance that the description and facsimiles before mentioned, and which must be registered in the corresponding book, are exact copies of the mark of manufacture that it is a question of protecting.

ART. 4. The Ministry of Fomento shall not accept nor register any mark of manufacture or of commerce that is not, or cannot be, a legitimate mark, or that is merely the name of a person, society, or corporation, not accompanied by a mark

sufficient for distinguishing it from the same name when other persons use it, or when the mark is identical to another already appropriated to the same class of objects and belonging to a different owner, or when it is registered or presented to be registered, or when it so resembles the mark of manufacture last mentioned, that in all probability it might deceive the public.

ART. 5. There shall be entered and registered at the Ministry of Fomento the date on which any mark of manufacture or of commerce is presented, to the end of obtaining the protection that is conceded by the present law, and the copies of the mark with the date of its presentation and of the application addressed to the Ministry of Fomento, sealed with the seal of this latter and certified by the Minister, will serve as sufficient proof at law when the right of priority as to the use of the mark is controverted.

ART. 6. The requisites established having been fulfilled, the National Executive, through the organ of the Ministry of Fomento, shall forward to the applicant, if there shall have been no opposition by third party, a certificate on National stamped paper of the third class, which the applicant shall sign, in which declaration shall be made that he is the proprietor of the mark of manufacture or of commerce registered, with all its specifications; such certificate having to be signed by the Minister of Fomento and sealed with the seal of the Ministry, which same shall serve as title of registration.

ART. 7. The right of exclusively using any mark of manufacture or of commerce registered and certified in the manner prescribed shall remain in force and vigor for the term of thirty years, counted from the date of registration, save in the case in which the mark is affixed to articles fabricated without the Republic and in which the same is protected, according to law, in a foreign country for a shorter term, in which case the mark registered in virtue of this law shall cease having the official protection that it accords at the same time that the protection terminates under the foreign laws that guarantee it.

ART. 8. Any mark registered in the manner detailed, during the term to which the preceding article refers, will give the right to the person, society, or corporation, that registers it, to use it exclusively in so far as it refers to the class of objects or goods that substantially are of the same descriptive properties and qualities as stated in the registration.

ART. 9. During the six months prior to the expiration of the term of thirty years, there may be solicited the renewal of the registration of any mark of manufacture or of commerce, which shall be granted in the terms of the original registration,

in an instrument drawn up on paper of the same stamp class. The renewal of the registration shall have the same duration of thirty years as that of the original registration.

ART. 10. No person shall have the right of legal action that claims the exclusive right as to a mark of manufacture or of commerce that is used, or the use of which is pretended, in an illegal business, or as to an article inherently noxious, or as to a mark that has been obtained fraudulently, or which has been formed or used with the intent of deceiving the public in the purchase or use of any merchandise.

ART. 11. Any person that shall attempt the registration of any mark of manufacture or of commerce for himself alone or for another, or that solicits from the Ministry of Fomento any action relative to this matter, making therefor fraudulent representations or declarations by word or in writing, and by any other fraudulent means, shall be subject to the penalties that the Penal Code stipulates for falsifiers or swindlers, according to the case, without prejudice of civil responsibility as regards third parties.

ART. 12. Any person that reproduces, falsifies, copies, or imitates, any mark of manufacture or of commerce registered, or affixes it to merchandise of substantially the same properties and qualities as those mentioned in the registration, shall be subject to responsibility at law for damages caused by the illegal use of such mark, without prejudice, in case of there being fraud, of suffering the penalties that the Penal Code stipulates.

ART. 13. Everything relative to the registration of which the present law treats shall be under the charge of the Direction that has jurisdiction in the Department of Concessions or Patents of Industries, in the Ministry of Fomento.

ART. 14. The Direction of which the preceding treats shall open two books of registrations, which shall be renewed whenever it shall be necessary—one for the registration of marks of manufacture and the other for that of marks of commerce; there having to be prepared a file for each case that arises.

ART. 15. The National Executive shall dictate the measures and rules that shall be necessary for the execution of the present law; and shall have published lithographically every year in the *Memoria* of the department the marks of manufacture or of commerce registered, giving access to such as so petition to the registers for the publication of engravings of said marks.

ART. 16. Marks of manufacture or of commerce of foreign products or goods registered without the Republic may also be registered by the Ministry of Fomento, even when there shall

not have been celebrated international treaties or agreements with respect to the matter, as regards products or goods that have, in the opinion of the National Executive, accredited their utility in the Republic.

EXECUTIVE RESOLUTION OF JUNE 30, 1920

By order of the Provisional President of the Republic, and in conformity with Arts. 2 and 7 of the Law concerning Marks of Manufacture and of Commerce, any person that solicits the registration of a mark must state the particular description of the goods or effects comprised in the class for which it is petitioned, in conformity with the official classification; and, if it be a foreign mark, he must include certification of the registration in the country of origin.

ORDER OF AUGUST 14, 1917

NAVAL GOVERNMENT

VIRGIN ISLANDS OF THE UNITED STATES*

GOVERNMENT HOUSE, ST. THOMAS

PUBLICATION

Residents of the Virgin Islands of the United States may apply for . . . trade mark registration to the Commissioner of Patents, United States Patent Office, Department of the Interior, Washington, D. C.

. . . trade mark certificates granted by the United States may be registered in the Virgin Islands of the United States, in the Office of the Government Secretary, upon payment of a fee of Francs 25. and the expenses of publication of the fact of registration.

Upon payment of the required fee and expenses, the Government Secretary shall cause a notice of the registration to be published in the newspapers of St. Thomas and in the newspapers of St. Croix.

Upon such publication the protection to such . . . trade marks granted by the United States shall be extended and enforced in the Virgin Islands of the United States, and all persons and parties will be bound by such notice of the rights of . . . registrant of trade marks.

NAVAL GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES, August 14, 1917.

(Signed) JAMES H. OLIVER, Governor.

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* Formerly the Danish West Indies.

ZANZIBAR

DECREE NO. 16 OF JANUARY 1, 1917

Title

1. This Decree may be cited as "The Patents, Designs, and Trade Marks Decree, 1917."*

Appointment of Registrar

2. (1) The British Resident may, when necessary, appoint a Registrar of Patents, Designs, and Trade Marks (in this Decree called "the Registrar"), with an office to be called the Registry of Patents, Designs, and Trade Marks (in this Decree called "the Registry").

(2) The term "Registrar" shall include any Deputy Registrar or person acting under the authority of such Registrar.

Register

3. There shall be kept at the Registry . . . a book called "The Register of Trade Marks."

. . . . . .

To whom certificates of registration may be granted

5. A certificate of registration . . . of any trade mark may be granted in Zanzibar to any person who in the United Kingdom or India is the registered proprietor of such trade mark, or to any person holding a certificate from a competent authority in any British possession, or to any person to whom all interest in such . . . trade mark in respect of Zanzibar has been assigned.

Procedure

6. Every application . . . for registration of a trade mark under this Decree shall be addressed to the Registrar, and there shall be transmitted with such application, so far as the same shall be applicable:

(1) two copies of the . . . certificate of registration;

. . . . . .

(4) three exact representations or specimens of the . . . trade mark;

(5) a certificate from the registering authority in the country of origin that the applicant . . . is the registered proprietor in the United Kingdom, India or a British possession of the . . . trade mark for which protection is asked, or that he is the person to whom all interest in such . . . trade mark in respect of Zanzibar has been assigned.

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* Provisions not relating to trade marks are omitted.

Applications to be filed and recorded

7. (1) The Registrar shall file every such application and the enclosures thereto in the register, and, subject to the other provisions of this section, shall cause to be made in the proper register in the prescribed manner an entry of the nature of the . . . trade mark and of the filing of the application and of the enclosures thereto.

Removal of identical trade marks from the register

(2) The Registrar, upon the passing of this Decree, shall examine the register . . . of trade marks, and shall erase from the register any . . . trade mark substantially identical with a . . . trade mark previously registered: Provided always that at least seven days' notice in writing shall be given by the Registrar of his intention to erase such . . . trade mark to the proprietor thereof in Zanzibar, or his agent, and an opportunity given to such proprietor or his agent to show cause why such . . . trade mark should not be erased.

Refusal to register identical trade marks

(3) The Registrar may refuse any application to register a . . . trade mark upon the ground that it is substantially identical with a . . . trade mark already registered.

Appeal from such removal or refusal to register

(4) An appeal from the decision of the Registrar upon any matter under sub-section (2) or (3) hereof shall, if filed within one month of such decision, lie to His Britannic Majesty's Court for Zanzibar.

Issue of certificates of registration

8. A certificate in duplicate in the prescribed form of the entry in the Register shall, when the application is granted, be made under the hand and seal of the Registrar. One copy of such certificate shall be issued to the applicant and one copy shall be filed by the Registrar. Such certificate shall be the . . . certificate of the registration of the . . . trade mark . . . and shall confer upon the person obtaining the same, or other the lawful holder thereof within the limits of Zanzibar, every right, title and advantage which the holder of . . . a certificate of the registration of a . . . trade mark has in England in respect of such . . . trade mark: Provided that such certificate shall be null and void whenever the . . . certificate to which it refers shall finally cease.

Order affecting Registrar may be made by His Britannic Majesty's Court

9. Any order requiring the Registrar to do or abstain from doing anything under this Decree may be made by a Judge of

His Britannic Majesty's Court on a summons in chambers.

Certificate of Registrar to be evidence

10. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Decree, or any rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Sealed copies to be evidence

11. Printed or written copies or extracts purporting to be certified by the Registrar and sealed with the seal of the Registry of or from registers and other books or documents kept there shall be admitted in evidence in all Zanzibar Courts, and in all proceedings, without further proof or a production of the original.

His Britannic Majesty's Court to afford all relief

12. (1) His Britannic Majesty's Court shall have power, in accordance with the provisions of the Patents, Designs, and Trade Marks Acts of England, to grant, either absolutely or on such terms and conditions as shall seem just, all such remedies as any person may appear to be entitled to in respect of either claim to or defence of any right, title or interest in relation to any . . . registration in force in Zanzibar under a certificate granted under this Decree: Provided always that no such Act passed after this Decree coming into force shall apply to Zanzibar until it shall be applied by Decree.

(2) Nothing in this section contained shall entitle the holder of any certificate of entry to recover damages for infringements of any . . . trade mark happening prior to the actual date of the grant of such certificate of entry.

"Passing-off" action

13. Nothing in this Decree contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

False entry

14. If any person makes or causes to be made a false entry in any register kept under this Decree, or a writing falsely purporting to be a copy of any entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable on conviction to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or both.

Unauthorized use of the Royal Arms or the Sultan's Crest

15. (1) If any person, without the authority of His Majesty, uses in connection with any trade, business, calling or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person, without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be liable on conviction to a fine not exceeding three hundred rupees: Provided that nothing herein shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

(2) The provisions of sub-section (1) hereof shall apply similarly in the case of the use of the crest of His Highness the Sultan of Zanzibar.

Offences

16. . . . . .

. . . . . .

(3) Any person who represents any trade mark as registered which is not so shall be liable for every offence on conviction to a fine not exceeding Rs. 75.

A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered," or any word or words expressing or implying that registration has been obtained for the trade mark.

(4) Provided always that if the person alleged to have committed an offence under this section shall show to the satisfaction of the Court that the said . . . trade mark is in fact . . . registered under the provisions of the law in force in England, such representation or sale shall not constitute an offence under this section.

Unauthorised use of the words "Registry of Patents," etc.

17. If any person uses on his place of business or any document issued by him or otherwise the words "Registry of Patents, Designs, or Trade Marks," or any other words suggesting that his place of business is officially connected with, or is, the Registry of Patents, Designs, or Trade Marks, he shall be liable on conviction to a fine not exceeding Rs. 300.

Prohibition of use of emblem of red cross on white ground, etc.

18. (1) It shall not be lawful for any person to use for

the purposes of his trade or business, or for any other purpose whatsoever, without the authority in writing of the Army Council of Great Britain, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland, or the words "Red Cross" or "Geneva Cross," and if any person acts in contravention of this provision, he shall be guilty of an offence against this Decree, and shall be liable on conviction to a fine not exceeding Rs. 150, and to forfeit any goods upon or in connection with which the emblem or words were used.

(2) Where a company or society is guilty of any such contravention, without prejudice to the liability of the company or society, every director, manager, secretary and other officer of the company or society who is knowingly a party to the contravention shall be guilty of an offence against this Decree and liable on conviction to the like penalty.

(3) Nothing in this section shall affect the right (if any) of the proprietor of a trade mark registered under the English Acts before the passing of this Decree, and containing any such emblem or words, to continue to use such trade mark for a period of four years from the 30th June, 1916, or such part of the said four years as the said trade mark shall be duly registered under the English Acts.

(4) Proceedings under this section shall not be instituted without the consent of the Attorney-General.

Report of Registrar

19. The Registrar shall on the 31st December in every year issue a report respecting the execution by him of this Decree, and such report shall be sent to His Britannic Majesty's Judge for inclusion in his annual report.

Power to make rules

20. The British Resident may make rules (1) prescribing the forms to be used under this Decree, (2) providing for and regulating the search and inspection of the Registers, (3) otherwise regulating the practice of registration under this Decree, (4) prescribing the fees and fixing the charges to be made for any act, matter or thing under this Decree to be done or observed, and (5) generally for the better carrying into effect of the provisions of this Decree.

Provided always that until such rules are made and published the practice hitherto in force shall continue and the fees hitherto charged shall continue to be charged.

CONVENTIONS*

PARIS CONVENTION OF MARCH 20, 1883, REVISED AT BRUSSELS DECEMBER 14, 1900, AND AT WASHINGTON JUNE 2, 1911†

ARTICLE 1. The contracting countries constitute a state of Union for the protection of industrial property.

ART. 2. The subjects or citizens of each of the contracting countries shall enjoy, in all the other countries of the Union, with regard to . . . trade marks, trade names, the statements of place of origin, suppression of unfair competition, the advantages which the respective laws now grant or may hereafter grant to the citizens of that country. Consequently, they shall have the same protection as the latter and the same legal remedies against any infringements of their rights, provided they comply with the formalities and requirements imposed by the National laws of each State upon its own citizens. Any obligation of domicile or of establishment in the country where the protection is claimed shall not be imposed on the members of the Union.

ART. 3. The subjects or citizens of countries which do not form part of the Union, who are domiciled or own effective and bona fide industrial or commercial establishments in the territory of any of the countries of the Union, shall be assimilated to the subjects or citizens of the contracting countries.

ART. 4. (a) Any person who shall have duly filed an application for a . . . trade mark, in one of the contracting countries, or the successor or assignee of such person shall enjoy, for the purpose of filing application in the other countries, and subject to the rights of third parties, a right of priority during the periods hereinafter specified.

(b) Consequently, the subsequent filing in one of the other countries of the Union, prior to the expiration of such periods, shall not be invalidated by acts performed in the interval, especially . . . by the use of the mark.

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*Provisions not relating to trade marks are omitted.

†This Convention is effective as to the following countries: Australia, Austria, Belgium, Brazil, Bulgaria, Ceylon, Cuba, Curação, Czechoslovakia, Danzig (Free City of), Denmark and the Faroe Islands, Dominican Republic, Dutch Indies, Finland, France, Algeria and Colonies, Germany and Colonies, Great Britain, Hungary, Italy, Japan, Jugoslavia, Luxemburg, Mexico, Morocco (French Zone), Netherlands, New Zealand, Norway, Poland, Portugal (with Azores and Maderia), Rumania, Spain, Surinam, Sweden, Switzerland, Trinidad and Tobago, Tunis, United States of America.

(c) The periods of priority above referred to shall be . . . four months for . . . trade marks.

(d) Whoever shall wish to avail himself of the priority of an anterior filing, shall be required to make a declaration showing the date and the country of this filing. Each country shall determine at what moment, at the latest, this declaration must be executed. This information shall be mentioned in the publications issued by the competent Administration . . . The contracting countries shall require of one who makes a declaration of priority the production of a copy of the application (specification, drawings, etc.) previously filed, certified to be a true copy by the Administration which shall have received it. This copy shall be dispensed from any legalisation. It may be required that it be accompanied by a certificate of the date of filing, issuing from this Administration, and of a translation. Other formalities shall not be required for the declaration of priority at the time of the filing of the application. Each contracting country shall determine the consequences of the omission of the formalities prescribed by the present article, unless these consequences exceed the loss of the right of priority.

(e) Later other justifications can be demanded.

. . . . . .

ART. 6. Every trade mark regularly registered in the country of origin shall be admitted to registration and protected as that in the other countries of the Union.

However, there may be refused or invalidated:

1) Marks which are of a nature to infringe rights acquired by third parties in the country where protection is claimed.

2) Marks devoid of all distinctive character, or even composed exclusively of signs or data which may be used in commerce, to designate the kind, quality, quantity, destination, value, place of origin of the products or the time of production, or become common in the current language or the legal and steady customs of commerce of the country where the protection is claimed.

In the estimation of the distinctive character of a mark, all the circumstances existing should be taken into account, particularly the duration of the use of the mark.

3) Marks which are contrary to morals or public order.

The country where the applicant has his principal establishment shall be considered as the country of origin.

If this principal establishment is not located in one of the countries of the Union, that to which the applicant belongs shall be considered as country of origin.

ART. 7. The nature of the product on which the trade

mark is to be applied cannot, in any case, be an obstacle to the filing of the mark.

ART. 7½. The contracting countries agree to admit for filing and to protect marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if these associations do not possess an industrial or commercial establishment.

Each country shall be judge of the special conditions under which an association may be admitted to have the marks protected.

ART. 8. Trade names shall be protected in all the countries of the Union without the obligation of filing, whether it be a part or not of a trade mark.

ART. 9. Any product bearing illegally a trade mark or a trade name shall be seized at importation in those of the countries of the Union in which this mark or this trade name may have a right to legal protection.

If the laws of a country do not admit of seizure on importation, the seizure shall be replaced by prohibition of importation.

The seizure shall be likewise effected in the country where illegal affixing shall have been made, or in the country into which the product shall have been imported.

The seizure shall be made at the request of the public ministry, or any other competent authority, or by an interested party, individual or society, in conformity to the interior laws of each country.

The authorities shall not be required to make the seizure in transit.

If the laws of a country admit neither of the seizure on importation nor the prohibition of importation, nor seizure in said country, these measures shall be replaced by the acts and means which the law of such country would assure in like case to its own citizens.

ART. 10. The provisions of the preceding article shall be applicable to any product bearing falsely, as indication of place of production, the name of a definite locality, when this indication shall be joined to a fictitious or borrowed trade name with an intention to defraud.

The interested party is considered any producer, manufacturer or merchant, engaged in the production, manufacture or commerce of such product, and established either in the locality falsely indicated as place of production or in the region where this locality is situated.

ART. 10½. All the contracting countries agree to assure

to the members of the Union an effective protection against unfair competition.

ART. 11. The contracting countries shall accord, in conformity with their national laws, a temporary protection to . . . trade marks, for products exhibited at international expositions, official or officially recognized, organized in the territory of one of them.

ART. 12. Each of the contracting countries agrees to establish a special service for Industrial Property and a central office for the communication to the public of . . . trade marks.

This service shall publish, as often as possible, an official periodical.

ART. 13. The international Office instituted at Berne under the name of "Bureau international pour la protection de la Propriété industrielle" is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its operation.

The international Bureau shall centralize information of any nature relative to the protection of industrial property, and form it in a general statistical report which shall be distributed to all Administrations. It shall proceed to considerations of common utility interesting to the Union and shall edit, with the aid of the documents put at its disposal by the different Administrations, a periodical in the French language on questions concerning the object of the Union.

Numbers of this periodical, like all the documents published by the international Bureau, shall be distributed among the Administrations of the countries of the Union, in proportion to the number of contributive units mentioned below. Copies and supplementary documents which shall be requested, either by the said Administrations, or by societies or individuals, shall be paid for separately.

The international Bureau shall hold itself at all times at the disposition of the members of the Union, to furnish them special information of which they may have need, on the questions relative to the international service of industrial property. It shall make an annual report of its management which shall be communicated to all members of the Union.

The official language of the international Bureau shall be French.

The expense of the international Bureau shall be borne in common by the contracting countries. They may not, in any case, exceed the sum of sixty thousand francs per year.

In order to determine the contributive part of each of the countries in this sum total of the expenses, the contracting coun-

tries and those which later join the Union shall be divided into six classes, each contributing in proportion to a certain number of units, to-wit:

	Units.
Class 1	25
Class 2	20
Class 3	15
Class 4	10
Class 5	5
Class 6	3

These coefficients shall be multiplied by the number of countries of each class, and the sum of the products thus obtained will furnish the number of units by which the total expenses are to be divided. The quotient will give the amount of the unit of expense.

Each of the contracting countries shall designate at the time of its accession, the class in which it wishes to be ranked.

The Government of the Swiss Confederation shall supervise the expenses of the international Bureau, make necessary advances and draw up annual statements of accounts which shall be communicated to all the other Administrations.

ART. 14. The present Convention shall be submitted to periodical revisions with a view to introducing improvements in it of a nature to perfect the system of the Union.

To this end Conferences of the delegates of the contracting countries shall be held successively in one of the said countries.

The Administration of the country where the Conference is to be held shall prepare, with the concurrence of the international Bureau the works of such Conference.

The Director of the international Bureau will assist at the meetings of the Conferences and take part in the discussions without a vote.

ART. 15. It is understood that the contracting countries reserve to themselves respectively the right to make separately, between themselves, special arrangments for the protection of industrial Property, in so far as these arrangements may not interfere with the provisions of the present Convention.

ART. 16. The countries which have not taken part in the present Convention shall be permitted to adhere to it upon their request.

Notice of adhesion shall be made through diplomatic channels to the Government of the Swiss Confederation, and by the latter to all the others.

It shall entail complete adhesion to all the clauses and

admission to all the advantages stipulated by the present Convention, and shall take effect one month after the notification made by the Government of the Swiss Confederation to the other unionist countries, unless a later date shall have been indicated by the adhering country.

ART. 16½. The contracting countries have the right to adhere at any time to the present Convention for their colonies, possessions, dependencies and protectorates, or for certain ones of them.

They may, to this end, either make a general declaration by which all their colonies, possessions, dependencies and protectorates are included in the adherence, or expressly name those included therein, or simply indicate those excluded from it.

This declaration shall be made in writing to the Government of the Swiss Confederation and by the latter made to all the others.

The contracting countries can, under like conditions, renounce the Convention for their colonies, possessions, dependencies and protectorates, or for certain ones of them.

ART. 17. The fulfillment of the reciprocal obligations contained in the present Convention is subordinated, in so far as need be, to compliance with the formalities and regulations established by the constitutional laws of those of the contracting countries which are bound to secure the application of the same which they engage to do with the least possibly delay.

ART. 17½. The Convention shall remain in force an indefinite time, until the expiration of one year from the day when the renunciation shall be made.

This renunciation shall be addressed to the Government of the Swiss Confederation. It shall effect only the country giving such notice, the Convention remaining operative as to the other contracting countries.

ART. 18. The present Act shall be ratified, and the ratification filed in Washington, at the latest, April 1, 1913. It shall be put into execution, among the countries which shall have ratified it, one month after the expiration of this period of time.

This Act, with its Final Protocol, shall replace, in the relations of the countries which shall have ratified it: the Convention of Paris, March 20, 1883; the Final Protocol annexed to that Act; the Protocol of Madrid, April 15, 1891, relating to the dotation of the international Bureau, and the additional Act of Brussels, December 14, 1900. However, the Acts cited shall remain binding on the countries which shall not have ratified the present Act.

ART. 19. The present Act shall be signed in a single copy,

which shall be filed in the archives of the Government of the United States. A certified copy shall be sent by the latter to each of the unionist Governments.

In Witness Whereof, the respective Plenipotentiaries have signed the present Act.

Done at Washington, in a single copy, the second day of June, 1911.

FINAL PROTOCOL

At the time of proceeding to the signing of the Act concluded on this day, the undersigned Plenipotentiaries are agreed upon the following:

Ad Article 1. The words "Propriété industrielle" (Industrial Property) shall be taken in their broadest acceptation; they extend to all production in the domain of agricultural industries (wines, grains, fruits, animals, etc.), and extractives (minerals, mineral waters, etc.).

Ad Art. 2. (a) . . . . . .

(b) It is understood that the provision in Art. 2 which dispenses the members of the Union from the obligation of domicile and of establishment has an interpretable character and must, consequently, be applied to all the rights granted by the Convention of March 20, 1883, before the entrance into force of the present Act.

(c) It is understood that the provisions of Art. 2 do not infringe the laws of each of the contracting countries, in regard to the procedure followed before the courts and the competency of those courts, as well as the election of domicile or the declaration of the selection of an attorney required by the laws on . . . marks, etc.

Ad Art. 4. . . . . .

Ad Art. 6. It is understood that the provision of the first paragraph of Art. 6 does not exclude the right to require of the depositor a certificate of regular registration in the country of origin, issued by competent authority.

It is understood that the use of badges, insignia or public decorations which shall not have been authorized by competent powers, or the use of official signs and stamps of control and of guaranty adopted by a unionist country, may be considered as contrary to public order in the sense of No. 3 of Art. 6.

However, marks, which contain, with the authorization of competent powers, the reproduction of badges, decorations or public insignia, shall not be considered as contrary to public order.

It is understood that a mark shall not be considered as

contrary to public order for the sole reason that it is not in conformity with some provision of laws on marks, except in the case where such provision itself concerns public order.

The present Final Protocol, which shall be ratified at the same time as the Act concluded on this day, shall be considered as forming an integral part of this Act, and shall be of like force, value and duration.

In Witness Whereof, the respective Plenipotentiaries have signed the present Protocol.

Done at Washington, in a single copy, June 2, 1911.

ARRANGEMENT OF MADRID, OF APRIL 14, 1891, REVISED AT BRUSSELS, DECEMBER 14, 1900, AT WASHINGTON, JUNE 2, 1911, FOR THE INTERNATIONAL REGISTRATION OF MARKS OF MANUFACTURE AND OF COMMERCE.*

ARTICLE 1. The subjects or citizens of any one of the contracting countries may be assured, in all the other countries, of the protection of their marks of manufacture or of commerce accepted on deposit in the country of origin, on deposit of the said marks with the International Bureau at Berne, effected through the intermediary of the Administration of the said country of origin.

ART. 2. Likened to the subjects or citizens of the contracting countries are the subjects or citizens of countries not having adhered to the present Arrangement that, within the territory of the limited Union constituted by this latter, shall satisfy the conditions stipulated by Art. 3 of the general Convention.

ART. 3. The International Bureau shall forthwith register the marks deposited in conformity with the first article. It shall notify this registration to the different Administrations. The marks registered shall be published in a periodic sheet issued by the International Bureau, through utilization of the indications contained in the application for registration and of the cliché (electrotype) furnished by the depositor.

If the depositor makes claim of the color as a distinctive element of his mark, he shall be bound:

1) To so declare, and to include with his deposit a mention indicating the color or the combination of colors claimed:

2) To join to his application facsimilies of the said mark in color, which shall be annexed to the notifications made by the International Bureau. The number of these facsimiles shall be fixed by the Regulation of Execution.

In view of the publicity to be made, in the contracting countries, to marks registered, each Administration will receive gratuitously from the International Bureau the number

* This Convention is operative as to: Austria, Belgium, Brazil, Cuba, Spain, France (including Algeria and Colonies), Hungary, Italy, Morocco (excepting the Spanish Zone), Mexico, The Netherlands, Dutch Indies, Surinam, Curaçao, Portugal (with Azores and Madeira), Rumania, Jugoslavia, Switzerland, Czechoslovakia and Tunis.

of copies of the above mentioned publication that it shall please it to demand. This publicity will be considered in all the contracting countries as amply sufficient, and no other may be required from the depositor.

ART. 4. Counting from the registration thus effected with the International Bureau, the protection of the mark in each one of the contracting countries will be the same as if this mark had been therein directly deposited.

Any mark internationally registered within the four months that follow the date of the deposit in the country of origin shall enjoy the right of priority established by Art. 4 of the general Convention.

ART. 4 *bis*. When a mark already deposited in one or several of the contracting countries, has been subsequently registered by the International Bureau in the name of the same titular or of his assign, the international registration shall be considered as substituted for the prior national registrations, without prejudice to rights acquired by reason of these latter.

ART. 5. In the countries in which their legislation so authorizes them, the Administrations to which the International Bureau shall notify the registration of a mark shall be authorized to declare that the protection may not be accorded to this mark in their territory. Such a refusal may be questioned only under the conditions that would be applied, by virtue of the general Convention, to a mark deposited for national registration.

They must exercise this authority within the delay foreseen by their national law, and, at latest, within the year of the notification foreseen by Art. 3 by indicating to the International Bureau their motives of refusal.

The said declaration, so notified to the International Bureau, shall be by it transmitted without delay to the Administration of the country of origin and to the proprietor of the mark. The party interested shall have the same means of recourse as if the mark had been by him directly deposited in the country in which the protection is refused.

ART. 5 *bis*. The International Bureau shall deliver to any person that shall make request therefor, subject to a fee fixed by the Regulation of Execution, a copy of the statements inscribed in the Register relative to a determined mark.

ART. 6. The protection resulting from registration with the International Bureau shall endure for twenty years, counting from this registration, but it may not be invoked in favor

of a mark that no longer enjoys legal protection in the country of origin.

ART. 7. The registration may always be renewed by following the prescriptions of Arts. 1 and 3.

Six months before the expiration of the term of protection, the International Bureau shall forward an official notice to the Administration of the country of origin and to the proprietor of the mark.

ART. 8. The Administration of the country of origin will fix at its pleasure, and collect to its profit, a fee that it shall claim from the proprietor of the mark the international registration whereof is applied for. To this fee there shall be added an international emolument of one hundred francs for the first mark, and fifty francs for each of the following marks, deposited at the same time by the same proprietor. The annual proceeds of this charge shall be distributed in equal parts among the contracting countries, under the care of the International Bureau, after deduction of the common expenses necessitated by the execution of this Arrangement.

ART. 8 *bis*. The proprietor of an international mark may always renounce protection in one or several of the contracting countries, by means of a declaration forwarded to the Administration of the country of origin of the mark, to be communicated to the International Bureau, which shall notify it to the countries that this renunciation concerns.

ART. 9. The Administration of the country of origin shall notify the International Bureau of avoidances, erasures, renunciations, transmissions, and other changes that shall take place as to the ownership of a mark.

The International Bureau shall register these changes, notify them to the Administrations of the contracting countries, and publish them forthwith in its journal.

The same procedure shall be followed when the proprietor of the mark shall petition for reducing the list of products to which it is applied.

The subsequent addition of a new product to the list may be obtained only through a new deposit effected in conformity with the prescriptions of Art. 3. Likened to addition is the substitution of one product for another.

ART. 9 *bis*. When a mark inscribed in the International Register shall be transferred to a person established in a contracting country other than the country of origin of the mark, the assignment shall be notified to the International Bureau by

the Administration of this same country of origin. The International Bureau shall register the assignment and, after having received the assent of the Administration to which the new titular is subject, it shall notify it to the other Administrations and publish it in its journal.

The present disposition is not intended to modify the legislations of the contracting countries that prohibit the transfer of the mark without the simultaneous assignment of the industrial or commercial establishment the products of which it distinguishes.

No transfer of a mark inscribed in the International Register, made to the profit of a person not established in one of the contracting countries, shall be registered.

ART. 10. The Administrations shall regulate with common accord the details relative to the execution of the present Arrangement.

ART. 11. The countries of the Union for the Protection of Industrial Property that have not taken part in the present Arrangement shall be admitted to adhere thereto on their request, and subject to the formalities prescribed by the general Convention.

As soon as the International Bureau shall be informed that a country or one of its colonies has adhered to the present Arrangement, it shall address to the Administration of this country, in conformity with Art. 3, a collective notification of the marks that, at this moment, enjoy international protection.

This notification will assure, in itself, to the said marks the benefit of the preceding provisions in the territory of the adherent country, and will give course to the delay of one year during which the Administration interested may make the declaration foreseen by Art. 5.

ART. 12. The present Arrangement shall be ratified and the ratifications thereof shall be deposited at Washington, at latest, April 1, 1913.

It shall become of effect one month after the expiration of this delay, and shall have the same force and duration as the general Convention.

ARRANGEMENT OF MADRID, OF APRIL 14, 1891, AS REVISED AT WASHINGTON, JUNE 2, 1911, CONCERNING THE REPRESSION OF FALSE INDICATIONS OF ORIGIN OF MERCHANDISE.*

ARTICLE 1. Any product bearing a false indication of origin in which one of the contracting countries, or a place situated in one of them, shall be directly or indirectly indicated as the place of origin, shall be seized on importation into any of the said countries.

Seizure shall likewise be made in the country in which the false indication of origin shall have been affixed, or in that one in which there shall have been introduced the product provided with this false indication.

If the legislation of a country does not admit of seizure on importation, this seizure shall be replaced by the prohibition of importation.

If the legislation of a coluntry does not admit of seizure within the country, this seizure shall be replaced by the actions and means that the law of this country assures in such a case to nationals.

ART. 2. The seizure shall be made on petition, either of the Public Minister, or of any competent authority, for example, the Customs Administration, or by an interested party, individual or society, in accordance with the domestic legislation of each country.

ART. 3. The present dispositions constitute no obstacle to the vendor indicating his name or his address upon products originating in a country different from that of sale; however, in this case, the address or the name must be accompanied by the precise indication—and in conspicuous characters—of the country or of the place of fabrication or production.

ART. 4. The tribunals of each country will have to decide what are the appellations that, by reason of their generic character, are outside the provisions of the present Arrangement—regional appellations of origin of products of the vine not being, however, comprised in the reservation specified by this article.

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* This Convention is operative as to: Brazil, Cuba, Spain, France (including Algeria and Colonies), Great Britain, New Zealand, Morocco (excepting the Spanish Zone), Portugal (with Azores and Madeira), Switzerland, Czechoslovakia and Tunis.

ART. 5. The States of the Union for the Protection of Industrial Property that have not taken part in the present Arrangement shall be admitted to adhere thereto on their request, and subject to the formality prescribed by Art. 16 of the general Convention.

ART. 6. The present Arrangement shall be ratified, and the ratifications thereof shall be deposited, at latest, on April 1, 1913.

It shall become of effect one month after the expiration of this delay, and shall have the same force and duration as the general Convention.

PAN-AMERICAN CONVENTION, SIGNED AT BUENOS AIRES, AUGUST 20, 1910

ARTICLE I. The signatory Nations enter into this Convention for the protection of trade marks and commercial names.

ART. II. Any mark duly registered in one of the signatory States shall be considered as registered also in the other States of the Union, without prejudice to the rights of third persons and to the provisions of the laws of each State governing the same.

In order to enjoy the benefit of the foregoing, the manufacturer or merchant interested in the registry of the mark must pay, in addition to the fees or charges fixed by the laws of the State in which application for registration is first made, the sum of fifty dollars gold, which sum shall cover all the expenses of both Bureaux for the international registration in all the signatory States.

ART. III. The deposit of a trade mark in one of the signatory States produces in favor of the depositor a right of priority for the period of six months, so as to enable the depositor to make the deposit in the other States.

Therefore, the deposit made subsequently and prior to the expiration of this period cannot be annulled by acts performed in the interval, especially by another deposit, by publication, or by the use of the mark.

ART. IV. The following shall be considered as trade marks: any sign, emblem, or especial name that merchants or manufacturers may adopt or apply to their goods or products in order to distinguish them from those of other manufacturers or merchants who manufacture or deal in articles of the same kind.

ART. V. The following cannot be adopted or used as trade marks: national, provincial or municipal flags or coats-of-arms; immoral or scandalous figures; distinctive marks which may have been obtained by others or which may give rise to confusion with other marks; the general classification of articles; pictures or names of persons without their permission; and any design which may have been adopted as an emblem by any fraternal or humanitarian association.

The foregoing provisions shall be construed without prejudice to the particular provisions of the laws of each State.

ART. VI. All questions which may arise regarding the priority of the deposit, or the adoption of a trade mark, shall be decided with due regard to the date of the deposit in the

State in which the first application was made therefor.

ART. VII. The ownership of a trade mark includes the right to enjoy the benefits thereof, and the right of assignment or transfer in whole or in part of its ownership or its use in accordance with the provisions of the laws of the respective States.

ART. VIII. The falsification, imitation or unauthorized use of a trade mark, as also the false representation as to the origin of a product, shall be prosecuted by the interested party in accordance with the laws of the State wherein the offence is committed.

For the effects of this article, interested parties shall be understood to be any producer, manufacturer or merchant engaged in the production, manufacture or traffic of said product, or in the case of false representation of origin, one doing business in the locality falsely indicated as that of origin, or in the territory in which said locality is situated.

ART. IX. Any person in any of the signatory States shall have the right to petition and obtain in any of the States, through its competent judicial authority, the annullment of the registration of a trade mark, when he shall have made application for the registration of that mark, or of any other mark calculated to be confused, in such state, with the mark in whose annullment he is interested, upon proving:

a) That the mark, the registration whereof he solicits, has been employed or used within the country prior to the employment or use of the mark registered by the person registering it, or by the persons from whom he has derived title;

b) That the registrant had knowledge of the ownership, employment or use in any of the signatory States, of the mark of the applicant, the annullment whereof is sought, prior to the use of the registered mark by the registrant or by those from whom he has derived title;

c) That the registrant had no right to the ownership, employment or use of the registered mark on the date of its deposit;

d) That the registered mark had not been used or employed by the registrant or by his assigns within the term fixed by the laws of the State in which the registration shall have been made.

ART. X. Commercial names shall be protected in all the States of the Union, without deposit or registration, whether the same form part of a trade mark or not.

ART. XI. For the purposes indicated in the present Convention a Union of American Nations is hereby constituted, which shall act through two International Bureaux established

one in the city of Habana, Cuba, and the other in the city of Rio de Janeiro, Brazil, acting in complete accord with each other.

ART. XII. The International Bureaux shall have the following duties:

1. To keep a register of the certificates of ownership of trade marks issued by any of the signatory States.

2. To collect such reports and data as relate to the protection of intellectual and industrial property and to publish and circulate them among the nations of the Union, as well as to furnish them whatever special information they may need upon this subject.

3. To encourage the study and publicity of the questions relating to the protection of intellectual and industrial property; to publish for this purpose one or more official reviews containing the full texts or digest or all documents forwarded to the Bureaux by the authorities of the signatory States.

The Governments of said States shall send to the International American Bureaux their official publications which contain the announcements of the registrations of trade marks, and commercial names, and the grants of patents and privileges as well as the judgments rendered by the respective courts concerning the invalidity of trade marks and patents.

4. To communicate to the Governments of the Union any difficulties or obstacles that may oppose or delay the effective application of this Convention.

5. To aid the Governments of the signatory States in the preparations of international conferences for the study of legislation concerning industrial property, and to secure such alterations as it may be proper to propose in the regulations of the Union, or in treaties in force to protect industrial property. In case such conferences take place, the Directors of the Bureaux shall have the right to attend the meetings and there to express their opinions, but not to vote.

6. To present to the Governments of Cuba and of the United States of Brazil, respectively, yearly reports of their labors which shall be communicated at the same time to all the Governments of the other States of the Union.

7. To initiate and establish relations with similar Bureaux, and with the scientific and industrial associations and institutions for the exchange of publications, information and data conducive to the progress of the protection of industrial property.

8. To investigate cases where trade marks, designs, and industrial models have failed to obtain the recognition of regis-

tration provided for by this convention, on the part of the authorities of any one of the States forming the Union, and to communicate the facts and reasons to the Government of the country of origin and to interested parties.

9. To co-operate as agents for each one of the Governments of the signatory States before the respective authorities for the better performance of any act tending to promote or accomplish the ends of this convention.

ART. XIII. The Bureau established in the City of Habana, Cuba, shall have charge of the registration of trade marks coming from the United States of America, Mexico, Cuba, Haiti, the Dominican Republic, El Salvador, Honduras, Nicaragua, Costa Rica, Guatemala and Panama.

The Bureau established in the City of Rio de Janeiro shall have charge of the registration of trade marks coming from Brazil, Uruguay, the Argentine Republic, Paraguay, Bolivia, Chile, Peru, Ecuador, Venezuela, and Colombia.

ART. XIV. The two International Bureaux shall be considered as one, and for the purpose of the unification of the registrations it is provided:

a) Both shall have the same books and the same accounts kept under an identical system;

b) Copies shall be reciprocally transmitted weekly from one to the other of all applications, registrations, communications and other documents affecting the recognition of the rights of owners of trade marks.

ART. XV. The International Bureaux shall be governed by identical regulations, formed with the concurrence of the Governments of the Republic of Cuba and of the United States of Brazil and approved by all the other signatory States.

Their budgets, after being sanctioned by the said Governments, shall be defrayed by all the signatory States in the same proportion as that established for the International Bureau of the American Republics at Washington, and in this particular they shall be placed under the control of those Governments within whose territories they are established.

The International Bureaux may establish such rules of practice and procedure, not inconsistent with the terms of this convention, as they may deem necessary and proper to give effect to its provisions.

ART. XVI. The Governments of the Republic of Cuba and of the United States of Brazil shall proceed with the organization of the Bureaux of the International Union as herein provided, upon the ratification of this Convention by at least two-thirds of the nations belonging to each group.*

The simultaneous establishment of both Bureaux shall not be necessary; one only may be established if there be the number of adherent governments provided for above.

ART. XVII. The treaties on trade marks previously concluded by and between the signatory States shall be substituted by the present convention from the date of its ratification, as far as the relations between the signatory States are concerned.

ART. XVIII. The ratifications or adhesion of the American States to the present Convention shall be communicated to the Government of the Argentine Republic, which shall lay them before the other States of the Union. These communications shall take the place of an exchange of ratifications.

ART. XIX. Any signatory State that may see fit to withdraw from the present Convention shall so notify the Government of the Argentine Republic, which shall communicate this fact to the other States of the Union, and one year after the receipt of such communication this Convention shall cease with regard to the State that shall have withdrawn.

In Witness Whereof, the Plenipotentiaries and Delegates sign this Convention and affix to it the Seal of the Fourth International American Conference.

Made and signed in the City of Buenos Aires, on the twentieth day of August, in the year one thousand nine hundred and ten, in Spanish, English, Portuguese and French, and filed in the Ministry of Foreign Affairs of the Argentine Republic in order that certified copies may be made to be forwarded through appropriate diplomatic channels to each one of the signatory Nations.

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*The following are the countries that have ratified this Convention, and date of ratification: Northern Group—United States of America, March 21, 1911; Costa Rica, August 7, 1915; Cuba, November 15, 1916; Dominican Republic, April 18, 1912; Haiti, October 8, 1918; Honduras, October 16, 1913; Guatemala, May 10, 1912; Nicaragua, March 13, 1913; Panama, June 12, 1913. Southern Group—Brazil, November 9, 1914; Bolivia (adhered), May 15, 1914; Ecuador, November 4, 1913; Paraguay, May 29, 1917; Uruguay, August 7, 1919; Peru, April 14, 1920. The following countries have not ratified: Northern Group—Mexico, Salvador. Southern Group—Argentine Republic, Chile, Colombia, Venezuela.

MONTEVIDEO CONVENTION*

ARTICLE 1. Every person to whom there is granted in one of the signatory States the right of exclusively using a mark of commerce or of manufacture shall enjoy the same privilege in the other States subject to the formalities and conditions established by their laws.

ART. 2. The ownership of a mark of commerce or of manufacture includes the power to use it, assign it, and to transfer it.

ART. 3. The visible sign, emblem, or name that the merchant or manufacturer adopts and affixes to his merchandise and products for the purpose of identifying them from those of other manufacturers or merchants that deal in articles of the same kind, shall be considered a mark of commerce or of manufacture.

There belong likewise to these classes of marks designs of manufacture or work that by means of weaving or imprinting are stamped on the product itself that is placed on sale.

ART. 4. Falsifications and counterfeits of marks of commerce and of manufacture shall be prosecuted before the courts in accordance with the laws of the State in whose territory the fraud is committed.

ART. 5. In order that the present Convention may come into force, it is not necessary that it be ratified simultaneously by all the signatory States. Any State having approved it shall notify its adhesion to the Governments of the Argentine Republic and of the Oriental Republic of Uruguay (in order that they may inform the other contracting States thereof. Such notification shall take the place of exchange of ratifications.

ART. 6. As soon as an exchange of ratifications shall have taken place in the manner indicated in the preceding article, the present Convention shall come into force, from that moment, for an indefinite period.

ART. 7. If one of the signatory States shall think fit to renounce the Convention or to introduce modifications therein it shall inform the other States; but it shall only be released after the expiration of two years from such renunciation, during

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* Ratified by Argentina, Paraguay, Peru and Uruguay. Bolivia, the only other signatory, did not ratify.

which period efforts shall be made to arrive at a fresh understanding.

ART. 8. Article 7 may be extended to any of the States that have not taken part in the Congress and which may desire to adhere to the present Convention.

ADDITIONAL PROTOCOL

ARTICLE 1. The laws of the contracting States shall be applied in cases occurring, whether the persons interested in legal matters, whereof it be a question, be natives or foreigners.

ART. 2. Their application shall be made *ex officio* by the Judge of the case, without prejudice to the parties being able to allege and to prove the existence and subject-matter of the law invoked.

ART. 3. Every recourse granted by the law of procedure of the place of the judgment for cases decided according to its own legislation, shall likewise be admitted for those that are to be decided by applying the laws of any of the other States.

ART. 4. The laws of the other States shall never be applied against political institutions, laws of public order, or good morals of the place where the case is tried.

ART. 5. In accordance with the stipulation in this Protocol, the Government shall be obliged to transmit to each other reciprocally two authentic copies of the laws in force, and of those that shall subsequently be sanctioned in their respective countries.

ART. 6. The Governments of the signatory States shall declare, on approval of the treaties concluded, whether they will accept the adherence of Nations not invited to the Congress in the same form as that of those Nations that, having agreed to the idea of the Congress, have taken no part in its deliberations.

ART. 7. The provisions contained in the articles that precede shall be considered an integral part of the treaties to which they refer, and their duration shall be the same.

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